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S. Hrg. 99-430

# BILLS TO AUTHORIZE PROSECUTION OF TERRORISTS AND OTHERS WHO ATTACK U.S. GOVERNMENT EMPLOYEES AND CITIZENS ABROAD

## HEARING

BEFORE THE

SUBCOMMITTEE ON SECURITY AND TERRORISM

OF THE

## COMMITTEE ON THE JUDICIARY
## UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

**S. 1373**

PROTECTION OF UNITED STATES GOVERNMENT PERSONNEL ACT OF 1985

**S. 1429**

TERRORIST PROSECUTION ACT OF 1985

AND

**S. 1508**

TERRORIST DEATH PENALTY ACT OF 1985

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JULY 30, 1985

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**Serial No. J-99-45**

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Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

52-349 O WASHINGTON : 1986

S521-25

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# BILLS TO AUTHORIZE PROSECUTION OF TERRORISTS AND OTHERS WHO ATTACK U.S. GOVERNMENT EMPLOYEES AND CITIZENS ABROAD

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TUESDAY, JULY 30, 1985

U.S. SENATE,
SUBCOMMITTEE ON SECURITY AND TERRORISM,
COMMITTEE ON THE JUDICIARY,
*Washington, DC.*

The subcommittee met, pursuant to notice, at 9:20 a.m., in room SR-485, Russell Senate Office Building, Hon. Jeremiah Denton (chairman of the subcommittee) presiding.

Present: Senators Hatch, McConnell, Leahy, and Specter (ex officio).

Staff present: Richard D. Holcomb, general counsel; Joel S. Lisker, chief counsel and staff director.

## OPENING STATEMENT OF HON. JEREMIAH DENTON, A U.S. SENATOR FROM THE STATE OF ALABAMA, CHAIRMAN, SUBCOMMITTEE ON SECURITY AND TERRORISM

Senator DENTON. Good morning, ladies and gentlemen. The hearing will come to order.

We welcome the chairman of the Labor and Human Resources Committee, Senator Orrin Hatch who, like me and like Senator Specter, has to attend the Judiciary Committee markup at 10 o'clock, so we are going to try to move as rapidly as we can.

The subcommittee is meeting today to receive testimony on combating international terrorism. Specifically, the hearing will review S. 1373 and S. 1429, bills to amend title 18, United States Code, to authorize prosecution of terrorists and others who attack U.S. Government employees and citizens abroad, and S. 1508, a bill to authorize the death penalty for first-degree terrorist murder.

The witnesses include our distinguished colleague from Pennsylvania, Senator Arlen Specter; Ambassador Robert Oakley, the Director of the Office for Counterterrorism and Emergency Planning, Department of State; the Honorable Abraham Sofaer, Legal Adviser, Department of State; Dr. Ray S. Cline, senior associate, Center for Strategic and International Studies, Georgetown University; and a panel including Mrs. Carolyn Byron, Mr. Leo Byron, and Ms. Pamela Byron, all victims of the recent TWA hostage incident.

Before calling on the first witness, I would like to summarize the underlying issues with respect to our response to international terrorism.

The subcommittee has collected sufficient evidence, through hearings, to conclude that there is more to terrorism than just a series of unrelated violent events perpetrated by several unrelated groups with which this country or other countries can deal on an ad hoc basis.

There is, for example, a clear pattern of Soviet-supported and Soviet-equipped insurgencies seeking to destabilize, by revolutions, whole regions such as South Africa, to politicize established religion, such as in Nicaragua and the Middle East, and to export violence against the democratic governments of neighboring states.

There are, of course, other sources of terrorism. We want to try to make as much sense out of it as we can and develop intelligent policy. Our friend, Senator Specter, has been diligent in that respect, and we have cooperated with him on these bills.

The trends are clear. Cooperation among terrorist groups is increasing. In some instances, drug money finances the violence. The lethality of the action is becoming greater as more powerful and more sophisticated weapons are employed. There is an increasing disregard for the innocent. More diplomats and world leaders are targets. More innocent civilians are made into pawns. U.S. interests are the No. 1 target, to the degree that there is an international network of terrorism.

The pattern that emerges from studying the testimony obtained in more than 60 hearings before the Subcommittee on Security and Terrorism—and more recently in joint hearings with the Judiciary Committee and the Foreign Relations Committee, which Senator Hatch has been a diligent attendee and an important contributor—is that terrorism is the most widely practiced form of modern warfare. It is both a major force and a major trend in foreign affairs.

How successful have we been in dealing with terrorist warfare against our commerce, soldiers, diplomats, leaders and private citizens and, particularly, against our interests overseas? Not very. We in Congress sometimes adopt self-defeating, even contradictory measures that often put us at odds with our friends and allies.

Most people are outraged at the violence of terrorism as depicted by the daily news, but that rage is short lived, and our plans to combat terrorism are rather short range and shallow.

We have come to a point that requires that we establish both a foreign and domestic policy suitable for dealing with the obvious threat, and we must segmentize that threat and see what it is to our prospective interests and to our different kinds of security interests.

U.S. policy on terrorism is fragmented and only partially developed. It is essential that we determine the degree of the threat to our various interests, set our goals and objectives, and then develop a policy and, finally, commitments. Commitments are the subject of all of the questions raised by the media: Are you going to do this? Should you do this now? Well, you cannot really operate methodically within a sound basis until you have your interests, goals, objectives, and policy identified, established, and we are starting to thrash that out in a very basic way these days.

Having done that, we must explain our policies so that we can build a consensus that will enable us to persevere and to succeed over the long haul. And really, that consensus will build along with the building of the policy. There is a mutual interest among all segments of our society to do something about this newly escalated threat.

Terrorism must be dealt with on many fronts, and a military response alone will not suffice. First, we must have laws that are sufficient to meet the threat. We must have a mechanism capable of enforcing these laws. We must pursue diplomatic initiatives, and our allies must stand firm with us on this issue. We must in the end be prepared to employ a full range of sanctions—legal, diplomatic, economic, and military.

I am sure that the sirens and lack of power today raise in all of our subconsciouses the reality of terrorism.

Today, we consider efforts initiated by Senator Specter to develop some legislation which attempt to confront the issue of terrorism.

Before asking Senator Hatch if he wishes to make a statement, I would like to place in the record copies of S. 1373, S. 1429, and S. 1508. I would also like to place in the record at this time a copy of an analysis on S. 1373 and S. 1429, prepared by the Congressional Research Service.

If there is no objection, these items will be placed in the hearing record.

[Copies of S. 1373, S. 1429, S. 1508, and an analysis of S. 1373 and S. 1429 follow:]

99TH CONGRESS
1ST SESSION

# S. 1373

To amend title 18, United States Code, to authorize prosecution of terrorists and others who attack United States Government employees abroad, and for other purposes.

---

IN THE SENATE OF THE UNITED STATES

JUNE 27 (legislative day, JUNE 26), 1985

Mr. SPECTER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

# A BILL

To amend title 18, United States Code, to authorize prosecution of terrorists and others who attack United States Government employees abroad, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Protection of United States Government Personnel Act of 1985".

SEC. 2. (a) Part I of title 18, United States Code, is amended by inserting after chapter 113 the following:

## "CHAPTER 113A—TERRORIST ACTS AGAINST UNITED STATES GOVERNMENT EMPLOYEES ABROAD

"Sec.
"2331. Terrorist acts against United States Government employees abroad.

### "§ 2331. Terrorist acts against United States Government employees abroad

"(a) Whoever kills or attempts to kill in any foreign country, or in international waters or air space, any citizen of the United States shall, if found guilty in a court of the United States, be sentenced to any term of years or imprisonment for life, and any such person found guilty of attempted murder shall be imprisoned for not more than 20 years.

"(b) Whoever assaults, strikes, wounds, imprisons or makes any other violent attack upon the person or liberty of any citizen of the United States in any foreign country or in international waters or air space, or, if likely to endanger his or her person or liberty, makes violent attacks upon his or her official premises, private accommodation, or means of transport, or attempts to commit any of the foregoing, shall be fined not more than $5,000 or imprisoned not more than three years, or both. Whoever in the commission of any such act uses a deadly or dangerous weapon shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

"(c) The United States may exercise jurisdiction over the alleged offense if the alleged offender is present in the United States, irrespective of the place where the offense was committed or the nationality of the victim or the alleged offender, or the manner in which the alleged offender was brought before the court.

"(d) In enforcing subsections (a) and (b), the Attorney General may request and shall receive assistance from any Federal, State, or local agency, including the Army, Navy, and Air Force, the Federal Bureau of Investigation and the Central Intelligence Agency, any statute, rule, or regulation to the contrary notwithstanding.".

(b) The table of chapters for part I of title 18, United States Code, is amended by inserting after the item for Chapter 113, the following:

**CHAPTER 113A—TERRORIST ACTS AGAINST GOVERNMENT EMPLOYEES ABROAD**

"113A—Terrorist acts against United States Government employees abroad ..... 2331".

99TH CONGRESS
1ST SESSION

# S. 1429

To amend title 18, United States Code, to authorize prosecution of terrorists who attack United States nationals abroad, and for other purposes.

---

IN THE SENATE OF THE UNITED STATES

JULY 11 (legislative day, JULY 8), 1985

Mr. SPECTER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

# A BILL

To amend title 18, United States Code, to authorize prosecution of terrorists who attack United States nationals abroad, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Terrorist Prosecution Act of 1985".

SEC. 2. (a) Part I of title 18, United States Code, is amended by inserting after chapter 113 the following:

**"CHAPTER 113A—TERRORIST ACTS AGAINST UNITED STATES NATIONALS ABROAD**

"Sec.
"2321. Terrorist acts against United States nationals abroad.
"Section 2321. Terrorist acts against United States Nationals abroad.

"(a) Whoever in an act of international terrorism kills or attempts to kill any national of the United States shall be punished as provided under section 1111, 1112, and 1113 of this title, except that any such person who is found guilty of murder in the first degree shall be sentenced to imprisonment for life, and any such person who is found guilty of attempted murder shall be imprisoned for not more than twenty years.

"(b) Whoever in an act of international terrorism assaults, strikes, wounds, imprisons, or makes any other violent attack upon the person or liberty of any national of the United States in any foreign country or in international waters or air space, or, if likely to endanger his or her person or liberty, makes violent attacks upon his or her official premises, private accommodation, or means of transport, or attempts to commit any of the foregoing, shall be fined not more than $5,000 or imprisoned not more than three years, or both. Whoever in the commission of any such act uses a deadly or dangerous weapon shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

"(c) For the purposes of this section, 'international terrorism' is used as defined in the Foreign Intelligence Surveillance Act, title 50, section 1801(c).

"(d) The United States may exercise jurisdiction over the alleged offense if the alleged offender is present in the United States, irrespective of the place where the offense

was committed or the nationality of the victim or the alleged offender.

"(e) In enforcing subsections (a) and (b), the Attorney General may request and shall receive assistance from any Federal, State, or local agency, including the Army, Navy, and Air Force, and the Federal Bureau of Investigation, any statute, rule, or regulation to the contrary notwithstanding.".

(b) The table of chapters for part I of title 18, United States Code, is amended by inserting after the item for chapter 113, the following:

"113A—Terrorist acts against United States nationals abroad ... 2331".

99TH CONGRESS
1ST SESSION

# S. 1508

To amend title 18, United States Code, to authorize the death penalty for first degree terrorist murder, and for other purposes.

---

IN THE SENATE OF THE UNITED STATES

JULY 26 (legislative day, JULY 16), 1985

Mr. SPECTER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

# A BILL

To amend title 18, United States Code, to authorize the death penalty for first degree terrorist murder, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Terrorist Death Penalty Act of 1985".

SEC. 2. (a) Part I of title 18, United States Code, is amended by inserting after chapter 113 the following:

**"CHAPTER 113A—DEATH PENALTY FOR TERRORIST MURDER**

"Sec.
"2321A. Death penalty for terrorist murder.

**"§ 2321A. Death penalty for terrorist murder**

"(a) SENTENCE OF DEATH.—A defendant who has been found guilty of first degree murder under section 1203(a), shall be sentenced to death if, after consideration of the factors set forth in paragraph (1) of this subsection in the course of a hearing held pursuant to this subsection, it is determined that imposition of a sentence of death is justified.

"(1) Factors to be considered in determining whether a sentence of death is justified.

"(A) MITIGATING FACTORS.—In determining whether a sentence of death is justified for any offense, the jury, or if there is no jury, the court, shall consider each of the following mitigating factors and determine which, if any, exist:

"(i) the defendant was less than eighteen years of age at the time of the offense;

"(ii) the defendant's mental capacity was significantly impaired, although the impairment was not such as to constitute a defense to prosecution;

"(iii) the defendant was under unusual and substantial duress, although not such duress as would constitute a defense to prosecution; and

"(iv) the defendant was an accomplice whose participation in the offense was relatively minor.

The jury, or if there is no jury, the court, may consider whether any other mitigating factors exists.

"(B) AGGRAVATING FACTORS.—In determining whether a sentence of death is justified, the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist:

"(i) the defendant has previously been convicted of another offense for which either a sentence of life imprisonment or death was authorized by statute; or

"(ii) in the commission of the offense the defendant knowingly created a grave risk of death to another person.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor exists.

"(2) Special hearing to determine whether a sentence of death is justified.

"(A) NOTICE BY THE GOVERNMENT.—If the attorney for the government believes that the cir-

cumstances of the offense are such that a sentence of death is justified under this section, he shall, a reasonable time before the trial, or before acceptance by the court of a plea of guilty, or at such time thereafter as the court may permit upon a showing of good cause, sign and file with the court, and serve on the defendant, a notice—

"(i) stating that the government believes that the circumstances of the offense are such that, if the defendant is convicted, a sentence of death is justified under this chapter; and

"(ii) setting forth the aggravating factor or factors that the government, if the defendant is convicted, proposes to prove as justifying a sentence of death.

The court may permit the attorney for the government to amend the notice upon a showing of good cause.

"(B) HEARING BEFORE A COURT OR JURY.—If the attorney for the government has filed a notice as required under subsection (A) and the defendant is found guilty, the judge who presided at the trial or before whom the guilty plea was entered, or another judge if that judge is un-

available, shall conduct a separate sentencing hearing to determine the punishment to be imposed. Prior to such a hearing, no presentence report shall be prepared by the United States Probation Service, notwithstanding the provisions of Rule 32(e) of the Federal Rules of Criminal Procedure. The hearing shall be conducted—

"(i) before the jury that determined the defendant's guilt;

"(ii) before a jury impaneled for the purpose of the hearing if—

"(I) the defendant was convicted upon a plea of guilty;

"(II) the defendant was convicted after a trial before the court sitting without a jury;

"(III) the jury that determined the defendant's guilt was discharged for good cause; or

"(IV) after initial imposition of a sentence under this section, reconsideration of the sentence under this section is necessary; or

"(iii) before the court alone, upon the motion of the defendant and with the approval of the attorney for the government.

A jury impaneled pursuant to paragraph (ii) shall consist of twelve members, unless, at any time before the conclusion of the hearing, the parties stipulate, with the approval of the court, that it shall consist of a lesser number.

"(c) PROOF OF MITIGATING AND AGGRAVATING FACTORS.—At the hearing, information may be presented as to any matter relevant to the sentence, including any mitigating or aggravating factor permitted or required to be considered. Information presented may include the trial transcript and exhibits if the hearing is held before a jury or judge not present during the trial. Any other information relevant to a mitigating or aggravating factor may be presented by either the attorney for the government or the defendant, regardless of its admissibility under the rules governing admission of evidence at criminal trials, except that information may be excluded if its probative value is substantially outweighted by the danger of creating unfair prejudice, confusing the issues, or misleading the jury. The attorney

for the government and the defendant shall be permitted to rebut any information received at the hearing, and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any aggravating or mitigating factor, and as to the appropriateness in the case of imposing a sentence of death. The attorney for the government shall open the argument. The defendant shall be permitted to reply. The attorney for the government shall then be permitted to reply in rebuttal. The burden of establishing the existence of any aggravating factor is on the government, and is not satisfied unless the existence of such a factor is established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant, and is not satisfied unless the existence of such a factor is established by a preponderance of the information.

"(D) RETURN OF SPECIAL FINDINGS.—The jury, or if there is no jury, or if there is no jury, the court shall consider all the information received during the hearing. It shall return a special finding as to each mitigating and aggravating factor concerning which information is presented

at the hearing. The jury must find the existence of a mitigating or aggravating factor by a unanimous vote, although it is unnecessary that there be a unanimous vote on any specific mitigating or aggravating factor if a majority of the jury finds the existence of such a specific factor.

"(E) RETURN OF A FINDING CONCERNED A SENTENCE OF DEATH.—If an aggravating factor if found to exist; the jury, or if there is no jury, the court, shall then consider whether all the aggravating factors found to exist sufficiently outweigh all the mitigating factors found to exist to justify a sentence of death, or, in the absence of a mitigating factor, whether the aggravating factors alone are sufficient to justify a sentence of death. Based upon this consideration, the jury by unanimous vote, or if there is no jury, the court, shall return to finding as to whether a sentence of death is justified.

"(F) SPECIAL PRECAUTION TO ASSURE AGAINST DISCRIMINATION.—In a hearing held before a jury, the court, prior to the return of a finding under subsection (E), shall instruct the jury that, in considering whether a sentence of death is justified, it shall not consider the race,

color, national origin, creed, or sex of the defendant. The jury, upon return of a finding under subsection (E), shall also return to the court a certificate, signed by each juror, that consideration of the race, color, national origin, creed, or sex of the defendant was not involved in reaching the juror's individual decision.

"(3) IMPOSITION OF A SENTENCE OF DEATH.—Upon a finding that a sentence of death is justified, the court shall sentence the defendant to death. Upon a finding that a sentence of death is not justified, the court shall impose any sentence other than death that is authorized by law. Notwithstanding any other provision of law, if the maximum term of imprisonment for the offense is life imprisonment, the court may impose a sentence of life imprisonment without parole.

"(4) REVIEW OF A SENTENCE OF DEATH.—

"(A) APPEAL.—In a case in which a sentence of death is imposed, the sentence shall be subject to review by the court of appeals upon appeal by the defendant. Notice of appeal must be filed within the time specified for the filing of a notice of appeal. An appeal under this section may be consolidated with an appeal of the judg-

ment of conviction and shall have priority over all other cases.

"(B) REVIEW.—The court of appeals shall review the entire record in the case, including—

"(i) the evidence submitted during the trial;

"(ii) the information submitted during the sentencing hearing;

"(iii) the procedures employed in the sentencing hearing; and

"(iv) the special findings returned.

"(C) DECISION AND DISPOSITION.—

"(i) If the court of appeals determines that—

"(I) the sentence of death was not imposed under the influence of passion, prejudice, or any other arbitrary factor; and

"(II) the information supports the special finding of the existence of an aggravating factor required to be considered,

it shall affirm the sentence.

"(ii) In any other case, the court of appeals shall remand the case for reconsideration.

"(iii) The court of appeals shall state in writing the reasons for its disposition of an appeal of a sentence of death under this section.

"(5) IMPLEMENTATION OF A SENTENCE OF DEATH.—A person who has been sentenced to death pursuant to the provisions of this chapter shall be committed to the custody of the Attorney General until exhaustion of the procedures for appeal of the judgment of conviction and for review of the sentence. When the sentence is to be implemented, the Attorney General shall release the person sentenced to death to the custody of a United States marshal, who shall supervise implementation of the sentence in the manner prescribed by the law of the State in which the sentence is imposed. If the law of such State does not provide for implementation of a sentence of death, the court shall designate another State, the law of which does so provide, and the sentence shall be implemented in the latter State in the manner prescribed by such law. A sentence of death shall not be carried out upon a woman while she is pregnant.

"(6) USE OF STATE FACILITIES.—A United States marshal charged with supervising the implementation of a sentence of death may use appropriate State or local facilities for the purpose, may use the services of an appropriate State or local official or of a person such an official employs for the purpose, and shall pay the costs thereof in an amount approved by the Attorney General.";

(b) The table of chapters for part I of title 18, United States Code, is amended by inserting after the item for chapter 113, the following:

**"CHAPTER 113A—DEATH PENALTY FOR TERRORIST MURDER**

**"113A—Death Penalty for Terrorist Murder ..... 2321A".**

(c) Section 1203(a) of title 18, United States Code, is amended as follows: At the end of the paragraph strike "." and add ", except that, if death results, any such person who is found guilty of first degree murder shall be sentenced as provided in section 2321A of this title.".

Congressional Research Service
The Library of Congress

Washington, D.C. 20540

July 26, 1985

TO : Senate Committee on the Judiciary:
Subcommittee on Security and Terrorism
Attn: Mr. Robert Carto

FROM : American Law Division

SUBJECT: Constitutional Appraisal Of Two Anti-Terrorist Proposals

Reference is made to your inquiry of July 19, 1985 requesting a review of any constitutional problems implicated by the "Protection of U.S. Government Personnel Act of 1985" (S. 1373) and the "Terrorist Prosecution Act of 1985" (S. 1429).

Although the bills in question seem to differ on the international legal jurisdictional basis relied on to reach acts of terrorism addressed by them and on some other details, both have a similar purpose. That purpose is to make it a federal crime prosecutable in the federal courts for anyone to commit specified offenses against the person of subjects of the United States outside the jurisdiction of the United States. Stated differently, the bills are intended to deter violent acts of terrorism abroad that are directed at Americans by holding out the threat of prosecution in the federal courts if and when personal jurisdiction of the terrorists can be obtained.

Both bills would add a new chapter, chapter 113A, to the Federal Criminal Code, 18 U.S.C., relating to terrorist acts against Americans abroad. The range of activities denounced by the bills as terrorism are identical, namely, killing and attempting to kill, and assaulting, striking, wounding, imprisoning or making any other violent attack upon the person or liberty of an American subject. Similarly, both bills are primarily intended to cover such activities outside the jurisdiction of the United States; S. 1373 does so expressly by providing that the giet

of the offense occur "in any foreign country, or in international waters or air space"; S. 1429 incorporates the definition of "international terrorism" of the Foreign Intelligence Surveillance Act, 50 U.S.C. § 1801 (c). Also, both proposals are virtually identical in the matter of penalties: first degree murder is punishable by mandatory life imprisonment; attempted murder is punishable by imprisonment for not more than 20 years; assault, battery and kindred offenses may be punished by a $5,000 fine or imprisonment for three years, or both, except that the use of a deadly or dangerous weapon in the commission of such acts may be punished by a $10,000 fine or imprisonment for ten years, or both.

Also common to both bills is the question of enforcement and litigation jurisdiction if the terrorist is present in the United States irrespective of where the offense was committed or the nationality of the victim or the terrorist.

Finally, both bills would authorize the Attorney General to request the assistance of any federal, state or local agency, the U.S. Armed Forces, and the Federal Bureau of Investigation in enforcing their criminal provisions.

As indicated above, one chief difference between the two bills is their ensuing reliance on a different jurisdictional basis to effect their extraterritorial consequences. By suggesting that the objects of the concern, in the title if not its substantive provisions, are employees of the United States Government, S. 1373 implies reliance on either the "protective principle" or the "passive personality" principle of jurisdiction. By making the injurious offenses against the person an element of an act of international terrorism, S. 1429 seems to implicate the universality principle of jurisdiction. Details about these jurisdictional matters will be discussed later.

As previously indicated, the short title of S. 1373 and Chapter 113A of the Federal Criminal Code proposed by it indicate that its substantive provisions are concerned with acts of terrorism directed at government personnel who are serving abroad. The substantive provisions of the bill, however, simply refer to the previously described acts when

committed against any citizen of the United States in a foreign jurisdiction. In other words, the provisions of the bill which spell out the crimes are not limited to Americans who are government employees unless that result is intended to be signaled by limiting the measure's protections to U.S. citizens, an exceedingly subtle approach to that end. See and compare Hampton v. Mow Sun Wong, 426 U.S. 88 (1976) and Vergara v. Hampton, 581 F. 2d 1281 (7th Cir. 1978). The safeguards of S. 1429, on the other hand, are intended to deter terroristic acts against "any national of the United States".

Also, while both bills permit the exercise of enforcement and litigation jurisdiction irrespective of the place where the offense was committed and the nationality of the victim or the offender, S. 1373 uniquely goes on to provide that such jurisdiction may be exercised irrespective of "the manner in which the alleged offender was brought before the court." Does this phrase sanction international kidnapping of terrorists to obtain the requisite personal jurisdiction to prosecute? E.g. Eichmann.

The basic question raised by both bills is whether their assertion of extraterritorial jurisdiction conforms to known and accepted bases of jurisdiction to prescribe criminal law under international law. While the merits of both may be favorably argued, perhaps somewhat more persuasively in the case of S. 1429 than S. 1373, their validity as applied to acts of foreigners committed in foreign countries without substantively more added seems questionable.

At the outset, it may be noted that few cases deal with the congressional power to prescribe laws encompassing criminal conduct by foreigners abroad. Most of the cases dealing with extraterritorial application raise the issue whether the statute in question embraced conduct engaged in outside the United States.

In United States v. Bowman, 260 U.S. 94, 98 (1922), the Supreme Court seems to indicate that the congressional power is coextensive with the jurisdiction bases under international law. "The necessary locus when not specifically defined depends upon the territorial limitations upon the

power and jurisdiction of a government to punish crime under the law of nations." Whether one views the congressional power to prescribe as bounded by jurisdictional principles of international law or that domestic law is generally construed so as not to bring it into conflict with international law, the result is the same.

International law has recognized, in varying degrees, five bases of jurisdiction with respect to the enforcement of the criminal law. The territorial and nationality principles under which jurisdiction is determined by either the situs of the crime or the nationality of the accused, in the words of one court, are universally recognized. The protective principle gives a state jurisdiction to prescribe a rule of law attaching legal consequences to conduct outside its territory that threatens its security as a state or the operation of its governmental functions, provided the conduct is generally recognized as a crime under the law of states that have reasonably developed legal systems. The universality principle which permits a state to define and punish offenses recognized by the law of nations as being of universal concern, such as piracy. The effects or objective territorial principle which is the exercise of jurisdiction to acts done outside a jurisdiction, but intended to produce and producing detrimental effects within it. See, generally, United States v. Pizzarusso, 388 F. 2d 8 (2d Cir. 1968).

In the cited case, the court distinguished the effects or objective territorial principle from the protective principle in that in the latter there need not be any actual effect in the country as would be required under the former.

An additional but controversial basis is the "passive personality" principle which "[s]tates have sometimes invoked ... to justify application of their -- law particularly criminal law — to acts committed outside their territory by persons not their nationals." Restatement, Foreign Relations, Tentative Draft No. 6 -- Vol. 1, § 402g (1985) (hereafter Restatement).

As crimes are universally regarded as offenses against sovereignty of the place where they are committed, territorial jurisdiction is the general rule of criminal law. The other jurisdictional principles have

been traditionally considered to be exceptions to that general principle. The rationale behind the latter has been explained in the following general terms: "... a [territorial] government ... in order to maintain its essential sovereignty, must be the only power capable of effecting the maintenance of peace and order within its own boundaries. Therefore, no other nation can enact extraterritorial legislation which would interfere with the operation of such laws." United States v. Rodriguez, 182 F. Supp. 479, 488 (S.D. Cal. 1960).

The five basic principles of criminal jurisdiction in international law have been relied upon by Congress and recognized by the courts. See Agata, "Memorandum on Extraterritorial Jurisdiction ...", I Working Papers Of The National Commission On Reform Of Federal Criminal Laws 73 (1970) (hereafter Working Papers).

The last mentioned commentator has explained the significance of these matters as follows:

> In summary, the practical significance of which principle is relied on for asserting jurisdiction over extraterritorial conduct relates to the nature of the offense, whether or not any conduct or harm within the territory of the U.S. need occur or be contemplated and whether the defendant is an alien or a national. Thus, citizens could be prosecuted for any conduct abroad regardless of the nature of the offense or its affect within the U.S. territory by reliance on the nationality principle. Aliens could also be subject to prosecution for any criminal conduct committed abroad if the "objective" territorial basis for jurisdiction were satisfied. Whether aliens are otherwise subject to extraterritorial jurisdiction depends on the nature of the offense if the protective or universally principle is relied or the status of the victim in the case of the passive personality principle. Id. at 72-73.

We turn now to an examination of the mentioned jurisdictional principles in the context of the two bills under consideration. As they are intended to operate outside the territorial jurisdiction of the United States, reliance must be had on the exceptions to the general rule of criminal law that a crime must be committed within the territorial jurisdiction of the sovereignty seeking to try the offense.

Under the "nationality theory" of jurisdiction, nationals abroad are subject to the laws of their government wherever they may be. This basis, however, is limited to the nationality of the accused, not the

victim. Accordingly, prosecution of American nationals for acts of terrorism that satisfy the other elements spelled out by S. 1373 and S. 1429 would seem free of doubt once the practical problem of getting him or her personally present within the jurisdiction of the United States for trial is realized.

As applied to the acts of foreigners committed in foreign countries, reliance must be had on one of the other jurisdictional principles. Although one court has rejected them as appropriate jurisdictional bases for criminal laws, United States v. Baker, 136 F. Supp. 546 (S.D.N.Y. 1955), the weight of authority is to the contrary. See, e.g., United States v. Rodriguez, 18 F. Supp. 479.

As indicated, under the "protective theory" of jurisdiction, a state has jurisdiction with respect to any crime committed outside its territory by an alien against the security, territorial integrity or political independence of a state, provided that the act or omission which constitutes the crime was not committed in the exercise of a liberty guaranteed the alien by the law of the place where it was committed. Ibid. The category of offenses which have been recognized as falling within this category are espionage, counterfeiting of the state's seal or currency, the falsification of official documents as well as perjury before consular officials or conspiracy to violate the immigration or customs laws, which are likely to be committed outside the territory by aliens." Restatement at §402 f. We know of no case where violence directed at a U.S. citizen because he or she was employed by the U.S. Government could be reached on the basis of the protective principle and while it could be argued, it is doubtful that it would sustain a law aimed at violence directed at U.S. citizens (S. 1373) or nationals of the United States as such.

Similarly, reliance upon the effects or objective territorial basis to support extension of jurisdiction to offenses against the person of a U.S. citizen or national seems problematical. While the commentators describe this as a suitable basis for crimes or torts, most of the domestic decisional authorities involve economic regulations. See Restatement 2d, 18 (1965). However, the examples furnished by the preparers of the

Restatement indicate that some kind of physical intrusion or effect within the state is necessary. E.g., "The effects principle is not controversial with respect to acts such as shooting or even sending libelous publications across a boundary and only mildly controversial but generally accepted with respect to liability for injury from products made outside of the state exercising jurisdiction and introduced into its stream of commerce." Restatement, Tentative Draft No. 6 at 402 d.

The preparers of the last mentioned source indicate, without citing supporting authority, that the "passive personality" principle has been advanced by some states to "terrorist and other organized attacks on a state's nationals by reason of their nationality, or to assassinations of a state's ambassadors or government officials." Id. at §402 g. Whether government officials includes government employees is one of a host of unresolved questions. If these and other matters are conceded this basis might arguably support a measure along the lines of S. 1373 if government employees as its title (but not its substance) indicates are the object of its safeguards.

The drafters of S. 1429 seem to be aware of some recent developments in the universality principle as applied to terrorism or to the pending Restatement's comments in this regard, or both. We note again that that bill is aimed at violence directed at U.S. nationals abroad as an act of international terrorism. The Restatement in this regard observes as follows:

> § 404. Universal Jurisdiction to Define and Punish Selected Offenses
>
> **A state may exercise jurisdiction to define and punish certain offenses recognized by the community of nations as of universal concern, such as piracy, slave trade, attacks on or hijacking of aircraft, genocide, war crimes, and perhaps terrorism, even where none of the bases of jurisdiction indicated in § 402 is present.**
>
> Comment:
>
> a. *Expanding class of universal offenses.* This section (as well as the corresponding section concerning jurisdiction to adjudicate (§ 423)) recognizes the existence of certain offenses which, under international law, any state may punish

although it has no links of territory with the offense, or of nationality with the offender (or even the victim). Universal jurisdiction over the listed offenses is established in international law as a result of universal condemnation of those activities and general interest in cooperating to suppress them, as reflected in widely-accepted international agreements and resolutions of international organizations. These offenses are subject to universal jurisdiction as a matter of customary law, even for states not party to any international agreement on the subject. Universal jurisdiction for additional offenses is also provided by international agreements, but it remains to be determined whether universal jurisdiction over a particular offense has become customary law for states not party to such an agreement. See § 102, Comment *f*.

There has been wide condemnation of terrorism although international agreements to define and punish it have not yet been widely adhered to because of inability to agree on its definition. The United States and six states (all in Latin America) have adopted a Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance, 27 U.S.T. 3949, T.I.A.S. No. 8413 (1976).

*b. Universal jurisdiction not limited to criminal law.* In general, states have exercised jurisdiction on the basis of universal interests in the form of criminal law, but international law does not preclude the application of non-criminal law on this basis, for example, by providing a remedy in tort or restitution for victims of piracy.

The difficulty here, of course, is the noted one that there is little agreement regarding what constitutes terrorism and this militates against asserted "universality". A bill along the lines of S. 1429 arguably would at least apply to terrorism perpetrated by foreign nationals in the six countries which have adopted the cited Convention.

The annexed materials indicate that domestic and international law are at odds with respect to forcible abduction to bring an offender before the courts. See Gerhard von Glahn, Law Among Nations 282-283 (1981); Henkin, Pugh, Schachter and Smit, International Law: Cases and Materials 449-451 (1980); Bishop, International Law: Cases and Materials 561-564 (1971).

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Senator DENTON. Senator Hatch?

## OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Senator HATCH. Thank you, Mr. Chairman.

I want to compliment you for holding hearings on these three very important bills, and I certainly want to welcome Senator Specter and the other distinguished witnesses on our panel today to the committee. Because I do not know of anything much more important at this particular time, in the light of world events and what has been going on, than this discussion regarding these three bills.

I want to compliment Senator Specter for his leadership in this area. He is a consummate lawyer, who has made a dramatic impact on the Judiciary Committee and on the laws of this country, and is somebody whose opinion cannot be ignored in these particular areas. So, we welcome you to the committee, and we look forward to listening to your testimony.

It seems to me that this is a propitious time to look at this type of legislation to see what we can do. There are some interesting suggestions made in these bills, and I, for one, look forward to hearing the testimony of the distinguished witnesses today.

So I want to thank you, Mr. Chairman, for holding these hearings, and I appreciate having the opportunity of being here with you.

Senator DENTON. Thank you, Senator.

We note and welcome the arrival of our friend and colleague from Kentucky, Senator McConnell, and ask if he cares to make any opening remarks.

## OPENING STATEMENT OF HON. MITCH McCONNELL, A U.S. SENATOR FROM THE STATE OF KENTUCKY

Senator MCCONNELL. Thank you, Mr. Chairman.

I, too, want to commend you on holding these hearings and to congratulate Senator Specter, with whom I serve on not only this committee but on the Intelligence Committee, for his foresight in coming up with these very important bills.

Mr. Chairman, I would like to put into the record an opening statement, and conclude my remarks and look forward to hearing the witnesses this morning.

Senator DENTON. Thank you, Senator.

[The prepared statement of Senator McConnell follows:]

### PREPARED STATEMENT OF SENATOR MITCH MCCONNELL

Mr. Chairman, I want to thank you for the opportunity to participate in this hearing, and to commend you for your leadership in holding this hearing on such a timely topic. We are all painfully aware of the extent to which international terrorism has rushed to the forefront of the news in the last few years. Unfortunately, we are equally aware of the ineffectiveness of the American response.

So I compliment our distinguished colleague, Senator Specter, for his effort to enhance the Government's ability to respond to terrorist attacks, and to create some real deterrent among the arsenal of weapons at the disposal of those arms of the Government, including the Judiciary, engaged in antiterrorist activity. I feel confident that most if not all Americans have felt a deep sense of frustration and helplessness at our seeming inability to reach and punish the perpetrators of these despicable crimes.

As I read them, these bills seek to make it a Federal crime, one reached by our own courts, for anyone to commit specified offenses against the person or property of subjects of the United States, even when the offense is committed outside the jurisdiction of the United States. Both S. 1373 an S. 1429 add new chapters to the Criminal Code relating to terrorist acts, and establish stated penalties for violation.

While I have a number of questions and concerns about the bills, I certainly applaud the concept. In particular, I have concern that the bill, S. 1373, seeks to exert extraterritorial jurisdiction in a novel and perhaps unconstitutional manner. I'll be interested in knowing more about the legality of the approach taken by the bill. I also have concern that the penalties proposed by the bills are perhaps insufficiently punitive to deal with the gravity of the problem. On this point I'm not at all decided, however, and will look forward to discussion of this issue.

Because of my position as a member of the Select Committee on Intelligence, I would be remiss if I failed to mention the role that our intelligence community would necessarily play in the successful implementation of any antiterrorist legislation similar to these bills. Presumably, our ability to exert extraterritorial jurisdiction would in large part depend on our ability to discover the identities and whereabouts of those terrorists who we might reasonable believe to be responsible for a given terrorist attack. These bills may have significant implications for our intelligence efforts, and I will be particularly interested in the extent to which the success of this legislation would depend on changes in our intelligence-gathering capabilities.

Again, Mr. Chairman, I commend you and Senator Specter for your leadership in this difficult subject, and look forward to the testimony of the witnesses. Thank you, Mr. Chairman.

Senator DENTON. Our first witness is our distinguished colleague from Pennsylvania, Senator Arlen Specter. As I have stated, he is a valuable ally in the fight against terrorism and has authored the legislation under consideration today. He recently cosponsored this Senator's Nuclear Power Plant Security and Antiterrorism Act, and has been interested in the subject overall and has been an important participant. I ask Senator Specter for whatever testimony he wishes to make at this time.

## STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Thank you, Mr. Chairman, for your very generous remarks, and I also appreciate the very kind comments made by my distinguished colleagues, Senators Hatch and McConnell.

In order to abbreviate my testimony, I ask unanimous consent that my statement—which itemizes the series of bills I have introduced, many in cosponsorship with you, Mr. Chairman, and one which we had a series of hearings in the 98th Congress—be inserted in the record, and move right to the center-point of the legislation which is under consideration. As you have noted, I introduced this legislation in the course of the 99th Congress.

[Senator Specter's submissions for the record follow:]

SENATOR SPECTER'S TERRORISM BILLS

S. 1508—JULY 26, 1985

A bill to amend the Act for the Prevention and Punishment of the Crime of Hostage-Taking to provide for the death penalty for first degree murder.

S. 1429—JULY 10, 1985

A bill to amend title 18, U.S.C., to authorize Prosecution of Terrorists Who Attack United States Nationals Abroad in an act of international terrorism. (Identical to S. 1373, but makes it clear acts covered must be acts of international terrorism, and removes language giving courts jurisdiction over the defendant "regardless of the manner in which the defendant was brought before the court.")

S. 1373—JUNE 26, 1985

A bill to amend title 18, U.S.C., To Authorize Prosecution of Terrorists and Others Who Attack U.S. Nationals Abroad. (Precursor to S. 1429.)
(First introduced on September 25, 1984 (98th Cong.) as S. 3018 but only covered government officers, agents and employees.)

S. RES. 190—JUNE 26, 1985

A resolution designed to encourage an international declaration that terrorism is a universal crime.
(First introduced on October 3, 1984 (98th Cong.) as S. Res. 473.)

S. 1383—JUNE 26, 1985

A bill to protect the international security of the United States against international terrorism by making the use of firearms or explosives to commit a felony by foreign diplomats in the United States a federal felony.
(First introduced on June 6, 1984 (98th Cong.) as S. 2771.) (Hearings held in 98th Congress, July 24 and September 21, 1984.)

S. RES. 191—JUNE 26, 1985

A resolution calling for international meeting to amend the Vienna Convention to prevent foreign diplomats who engage in terrorism from claiming immunity from criminal prosecution.
(First introduced on June 6, 1984, as S. Res. 395.)

S. RES. 196—JUNE 26, 1985

A resolution calling on the President of the United States to immediately take steps to halt all U.S. carrier traffic into and out of Athens Airport and other airports failing to meet accepted security standards.

S. 871—APRIL 3, 1985

A bill to stop all trade with Libya because of its involvement in international terrorism. (Adopted as amendment to Foreign Aid Authorization bill on May 15; adopted on House bill July 10, accepted by conferees as authority for President on July 26, 1985.)

United States of America

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 99th CONGRESS, FIRST SESSION

Vol. 131 WASHINGTON, THURSDAY, JUNE 27, 1985 No. 88

## Senate

*(Legislative day of Wednesday, June 26, 1985)*

By Mr. SPECTER:

S. 1373. A bill to amend title 18, United States Code, to authorize prosecution of terrorists and others who attack U.S. Government employees abroad, and for other purposes; to the Committee on the Judiciary.

PROTECTION OF UNITED STATES GOVERNMENT PERSONNEL ACT

Mr. SPECTER. Mr. President, today I am reintroducing legislation that would expand U.S. law by making it a crime for anyone in any country to assault any U.S. citizen as part of an act of terrorism. This legislation would also preclude defendants in such cases from challenging the manner in which they were brought before the court.

A similar bill was originally introduced as S. 3018 in the 98th Congress. This broader version now deserves prompt enactment.

We need not wait for international agreements to be finalized before we begin to exert the full force of the law against the terrorist menace. There are steps we can take right now, unilaterally, to expand our ability to protect our own citizens abroad.

Significant security measures have already been implemented at U.S. embassies and installations, and the new Overseas Security Advisory Council recently announced by Secretary Shultz should enhance the safety of corporate personnel in threatened areas throughout the world.

But there remains a critical gap in our arsenal against terrorism: murder of U.S. citizens outside our borders, other than of specially designed Government officials and diplomats, is not a crime under U.S. law.

I was stunned to realize that those responsible for murdering over 260 U.S. marines while they slept in their barracks in Lebanon are not guilty of any U.S. crime for their murder. Nor are those terrorists who cold-bloodedly shot two U.S. citizens during the hijacking in Kuwait. Existing law punishes only those who assault our diplomats. Under my bill, when a U.S. marine is killed or wounded in a bomb attack, an investigation can be initiated and the culprits can be brought to this country and prosecuted.

This act will in no way contravene or conflict with either international or constitutional law. While criminal jurisdiction is customarily limited to the place where the crime occurred, it is well-established constitutional doctrine that Congress has the power to apply U.S. law extraterritorially if it so chooses. (*See e.g., United States* v. *Bowman*, 260 U.S. 94, 98 (1922)).

International law also recognizes broader criminal jurisdiction. If an alleged crime occurs in a foreign country, a nation may still exercise jurisdiction over the defendant if the crime has a potential adverse effect upon its security or the operation of its governmental functions. This basis for jurisdiction over crimes committed outside the United States has been applied by the Federal courts in contexts ranging from drug smuggling to perjury. Clearly, then, the exercise of U.S. criminal jurisdiction is also justified to prosecute the terrorist who assaults or murders American personnel abroad. Such attacks undoubtedly have an adverse effect upon the conduct of our Government's foreign affairs, and potentially threaten the security interest of the United States as well.

But making terrorist murder a U.S. crime alone will not protect Americans abroad. We must also demonstrate our seriousness by applying the law with fierce determination. In many cases, the terrorist murderer will be extradited or seized with the cooperation of the government in whose jurisdiction he or she is found. Yet, if the terrorist is hiding in a country like Lebanon, where the government, such as it is, is powerless to aid in his removal, or in Lybia, where the government is unwilling, more forceful intervention may be necessary.

This bill provides, in accord with constitutional and international law, the necessary subject matter jurisdiction to prosecute those who attack U.S. personnel abroad. But to obtain personal jurisdiction over the culprit himself, the suspect must first be seized or arrested and brought to the United States to stand trial. Under current constitutional doctrine, both U.S. citizens and foreign nationals can be seized and brought to trial in the United States without violating due process of law. *See*, for example, *Frisbie v. Collins*, 342 U.S. 519, 522 (1952); *Ker v. Illinois* 119 U.S. 436 (1886).

It may surprise some to hear that such methods are an appropriate way to bring criminals to trial. If someone is charged or chargeable with an offense and is at liberty in some foreign country, it is an accepted principle of law to take that alleged criminal into custody if necessary and return him to the jurisdiction which has authority to try him. That prosecution and conviction is sustainable and is proper under the laws of the United States and under international law.

This principle has been in effect for almost 100 years, going back to 1886, in the landmark case of Kerr versus Illinois, where the State of Illinois kidnaped a defendant in Peru, a man being charged with a crime in Illinois, and brought him back to Illinois for trial, where he was convicted. The case went to the Supreme Court of the United States and the Supreme Court of the United States said it was appropriate to try that man in Illinois and to convict him notwithstanding the means which were used to bring him back to trial in that jurisdiction.

No country in the world, no country in the history of the development of law, has more rigorous concepts of the due process of law than the United States of America and the U.S. Supreme Court. That doctrine was upheld in an opinion written by Justice Hugo Black, well known for his concern about defendants' rights, in the case of Frisbie versus Collins, handed down by the Supreme Court of the United States in 1952 and upheld in later decisions.

In the Frisbie case, Justice Black stated:

> This court has never departed from the rule announced in *Ker* v. *Illinois*, that the powers of a court to try a person for a crime is not impaired by the fact that he had been brought in the court's jurisdiction by reason of a forceable abduction.

I would suggest to Senators that in dealing with the crime of terrorism, we ought to find the terrorists when we have some reason to believe we know who they are. It requires an investigation. It requires pursuit. It may require extradition or, where extradition is not possible, it may require abduction to bring these vicious criminals to trial.

Resort to such tactics will not ordinarily be necessary. The nation where the offender is found may prosecute that person itself or that nation may extradite him or consent to a seizure by U.S. agents within its territory. In the rare instance, however, where there exists in effect no government capable of arresting or prosecuting the offender—and I would suggest that that situation exists in a nation like Lebanon today where there is hardly a government capable of enforcing law and order—in that extreme situation or wherever the terrorists may be found in nations which flagrantly violate international law or harbor international terrorists, then the United States may be compelled to use forceful methods to bring a terrorist to justice. And I would suggest that on a balancing test, that is an appropriate course of conduct.

It is this kind of forceful, effective action that the United States must be in a position to employ where necessary to respond to terrorist attacks against our citizens abroad. The legislation that I am introducing today will accomplish that result.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1373

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That this Act may be cited as the "Protection of United States Government Personnel Act of 1985".

SEC. 2. (a) Part I of title 18, United States Code, is amended by inserting after chapter 113 the following:

"CHAPTER 113A—TERRORIST ACTS AGAINST UNITED STATES GOVERNMENT EMPLOYEES ABROAD

"Sec.

"2331. Terrorists acts against United States government employees abroad.

"§ 2331. Terrorist acts against United States government employees abroad

"(a) Whoever kills or attempts to kill in any foreign country, or in international waters or air space, any citizen of the United States shall, if found guilty in a court of the United States, be sentenced to any term of years or imprisonment for life, and any such person found guilty of attempted murder shall be imprisoned for not more than 20 years.

"(b) Whoever assaults, strikes, wounds, imprisons or makes any other violent attack upon the person or liberty of any citizen of the United States in any foreign country or in international waters or air space, or, if likely to endanger his or her person or liberty, makes violent attacks upon his or her official premises, private accommodation, or means of transport, or attempts to commit any of the foregoing, shall be fined not more than $5,000 or imprisoned not more than three years, or both. Whoever in the commission of any such act uses a deadly or dangerous weapon shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

"(c) The United States may exercise jurisdiction over the alleged offense if the alleged offender is present in the United States, irrespective of the place where the offense was committed or the nationality of the victim or the alleged offender, or the manner in which the alleged offender was brought before the court.

"(d) In enforcing subsection (a) and (b), the Attorney General may request and shall receive assistance from any Federal, State, or local agency, including the Army, Navy, and Air Force, the Federal Bureau of Investigation and the Central Intelligence Agency, any statute, rule, or regulation to the contrary notwithstanding.".

(b) The table of chapters for part I of title 18, United States Code, is amended by inserting after the item for Chapter 113, the following:

"CHAPTER 113A—TERRORIST ACTS AGAINST UNITED STATES GOVERNMENT EMPLOYEES ABROAD

"113A—Terrorists acts against United States government employees abroad ..... 2331".

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By Mr. SPECTER:

S. 1383. A bill to protect the internal security of the United States against international terrorism by making the use of a firearm to commit a felony by foreign diplomats in the United States a Federal felony; to the Committee on the Judiciary.

CRIMINALIZATION OF TERRORIST ACTS BY FOREIGN DIPLOMATS

Mr. SPECTER. Mr. President, today I am reintroducing legislation that would make foreign diplomats in the United States a subject to prosecution for using a firearm to commit any act constituting a felony under U.S. law.

I originally introduced this legislation as S. 2771 on June 15, 1984. The need for its speedy enactment has only increased since that time.

In my statement accompanying reintroduction today of my resolution urging the President to seek renegotiation of the Vienna Convention on Diplomatic Relations, I have discussed the case of the Libyan so-called "diplomats" in London, who used their country's embassy as a terrorist base. I need not recite the sad facts of that case again.

Even while we await renegotiation of the Vienna Convention, we must take steps to protect ourselves against the abuse of diplomatic immunity. And if that renegotiation does indeed take place, we will need legislation to implement it. This bill will serve that purpose. I urge my colleagues to give it speedy consideration.

CONCLUSION

The proposals I have outlined reflect the current state of my own effort to provide a viable alternative to a unilateral military respons to terrorism, an alternative I believe will prove more effective.

These suggestions can command the necessary public support, and they will send an urgently needed signal to terrorists-criminals and their patrons that the time of talking tough is over; that the United States has a coherent policy for waging an international war on this international crime and the national will take whatever steps are necessary to carry it out.

Mr. President, I ask unanimous consent that a copy of the bill be printed in the RECORD.

There being no objection, the bill was orderd to be printed in the RECORD, as follows:

S. 1383

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That (a) chapter 44 of title 18, United States Code, is amended by adding at the end thereof the following:

"§ 930. Foreign diplomats

"(a) It shall be unlawful for—

"(1)(A) any member of a foreign diplomatic mission in the United States entitled to immunity from the criminal jurisdiction of the United States under the provisions of the Vienna Convention on Diplomatic Relations, done on April 18, 1961; or

"(B) any member of a foreign consular post in the United States entitled to immunity from the criminal jurisdiction of the United States under the provisions of the Vienna Convention on Consular Relations, done on April 24, 1963,

to use a firearm to commit any act constituting a felony under the criminal laws of the United States or any State.

"(b) Whoever violates this section shall be punishable by a fine of $10,000 or by imprisonment for 10 years, or both.

"(c) For purposes of this section—

"(1) the term "member of a foreign diplomatic mission" includes any individual described by Article 1(b) of the Vienna Convention on Diplomatic Relations, done on April 18, 1961; and

"(2) the term "member of a foreign consular post" includes any individual described by Article 1(g) of the Vienna Convention on Consular Relations, done on April 24, 1963.".

(b) The analysis for chapter 44 of title 18 United States Code is amended by adding at the end thereof the following:

"930. Foreign diplomats.".

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SENATE RESOLUTION 190—MAKING TERRORISM A UNIVERSAL CRIME

Mr. SPECTER submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 190

Whereas in the past decade there have been nearly 6,500 terrorist incidents around the world, killing over 3,500 people and wounding more than 7,600, including over 2,500 incidents against Americans;

Whereas terrorism anywhere affects nations everywhere by chilling the free exercise of sovereign authority;

Whereas rampant terrorism by its very nature threatens world order and thereby all civilized nations and their citizens;

Whereas any and every nation has the right, under current principles of international law, to assert jurisdiction over offenses considered to be "universal crimes", such as piracy and slavery, in order to protect sovereign authority, universal values, and the interests of mankind; and

Whereas individuals committing "universal crimes" may be prosecuted in any nation in which the offender may be found, irrespective of the nationality of the offender or victim or the place of the offense: Now, therefore, be it

*Resolved*, That it is the *sense* of the Senate that the President should call for international negotiations for the purpose of agreeing on a definition of "international terrorist crimes" and for the purpose of considering whether such a crime would constitute a universal crime under international law. Such definition should require that acts constituting an international terrorist crime—

(1) involve the threat or use of violence or be dangerous to human life,

(2) would be a crime in the prosecuting jurisdiction if committed within its boundaries,

(3) appear to be intended—

(A) to intimidate or coerce a civilian population;

(B) to influence the policy of a government by intimidation or coercion; or

(C) to affect the conduct of a government by assassination or kidnapping; and

(4) transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum.

These international negotiations should also include consideration of establishing an international criminal court along the lines of the International Military Tribunal established after World War II for the trial of major war criminals at Nuremburg, Germany, that would have jurisdiction over the crime of international terrorism.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to the President.

Mr. SPECTER. Mr. President, I am submitting a resolution designed to encourage an international declaration that terrorism is a universal crime. This is part of my continuing effort to redirect the focus of national and international attention from the divisive issue of whether to respond militarily to terrorist acts to a fundamental reality too often forgotten: terrorists are criminals. And nations that aid and abet these terrorists are effective accomplices.

This resolution is identical to Senate Resolution 473 in the 98th Congress, which I submitted October 4, 1984.

Ultimately, I am convinced that law-abiding nations will succeed against this threat to law and order worldwide, not by adopting the terrorists' tactics that threaten innocents, but by fiercely maintaining that threatened order and bringing the full force of the law to bear against these most heinous criminals.

When pirate-infested waters threatened the commerce and safety of all civilized nations, the international community agreed that this common threat transcended traditional concepts of sovereign jurisdiction. They agreed that any country that captured a pirate, anywhere, could prosecute him on behalf of all countries. Today's international criminals have left the high seas for airplanes and trucks loaded with explosives. But the threat posed by terrorists is just as universal as that once posed by pirates, and, like piracy, terrorism should be prosecuted as a "universal crime" against humanity.

A universal crime, according to well-established principles of international law, is one that, by its very nature affects the interests of all nations, regardless of where committed or the nationality of the offender.

Piracy is the oldest universal crime, but the principle has also been applied over the years to other generally condemned acts such as slavery and torture.

If piracy and torture violate the law of nations, surely the heinous acts of terrorism do. In the past decade, there have been nearly 6,500 terrorist incidents around the world, killing over 3,500 people and wounding more than 7,600, including over 2,500 incidents against Americans. Like piracy, terrorism anywhere affects nations everywhere by spreading fear and paralysis that chills the free exercise of sovereign authority with the threat that lawless fanatics will display their disapproval through violent means.

To encourage a united effort by all nations dedicated to combatting this deadly menace, my resolution proposes that the President call for international negotiations aimed at determining an international definition of terrorism which could then be established as a universal crime punishable by any nation that captures the terrorist.

The resolution suggests guidelines for arriving at a definition of international terrorism: It should involve the threat or use of violence or acts dangerous to human life that would be a

crime in the prosecuting jurisdiction if committed there, and that appear to be intended to intimidate or coerce a civilian population, to influence the policy of a government by intimidation, or to affect the conduct of a government by assassination or kidnapping. The acts must be international in the sense that they transcend national boundaries. This language closely parallels the definition of international terrorism codified in the Foreign Intelligence Surveillance Act at 50 U.S.C. 1801(d). Uniformed military engaged in combat would be excepted from the definition.

The resolution also calls on the President to include on the agenda for these negotiations consideration of establishing an international criminal court along the lines of the International Military Tribunal established after World War II for the trial of major war criminals at Nuremberg, Germany. Such an international forum could provide an optional alternative to persecution by an individual nation and may, in some cases, provide a more credible and collective judgment. Jurisdiction could be limited to established universal crimes.

In making terrorism a universal crime we broaden both the class of people protected—all citizens of any nation—and the class of protectors—all law-abiding nations. In doing so, we enhance the likelihood that terrorists will be punished and deterred. No longer will prosecution of a terrorist be limited by the inclination or ability of any country. Nor will it be limited to the coincidence of an extradition treaty between the country asserting jurisdiction over the terrorist and the country in which that terrorist is found.

The political use of terror generated by violent acts against innocent victims is intolerable. It is an affront to all nations of the world, and requires an international resolve to combat it. The U.S. should exercise its leadership role and call on all civilized nations to translate international indignation into international action by making terrorism a universal crime.

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## SENATE RESOLUTION 191—ELIMINATION OF DIPLOMATIC IMMUNITY FOR TERRORISTS

Mr. SPECTER submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. Res. 191

Whereas article 31 of the Vienna Convention of 1961 provides: "A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving state," thus granting absolute and complete immunity for all crimes, including murder by assassination;

Whereas this grant of full immunity was based on the assumption that either accredited diplomats would not commit heinous crimes or that, pursuant to article 37 which provides "The immunity of a diplomatic agent from the jurisdiction of the receiving state does not exempt him from the jurisdiction of the sending state," any diplomats committing such crimes would be prosecuted by their own government;

Whereas the recent machinegunning by diplomats of Libya from their London Embassy in which eleven dissident Libyan students were injured and a British policewoman was killed, reportedly on instructions radioed from Tripoli, began a new era in the history of diplomacy and showed complete contempt for human life and international law and proved that the established assumptions about lawful behavior and home government prosecution are no longer valid: Now, therefore, be it

*Resolved*, That it is the sense of the Senate that in order both to deter assassinations and other armed assaults and to bring to justice any diplomats committing such grave offenses, the President of the United States should seek a renegotiation of the Vienna Convention so as to immunity from criminal jurisdiction with the objective of amending article 31 to exempt from such immunity murder and other grave crimes involving assault with firearms or explosives.

Mr. SPECTER. Mr. President, today I am resubmitting a resolution that would help prevent foreign diplomats who engage in terrorism from claiming immunity from criminal prosecution.

This legislation was originally submitted as Senate Resolution 395 on June 6, 1984. It calls upon the President to seek a renegotiation of the Vienna Convention on Diplomatic Relations with the objective of exempting murder and other grave crimes involving assault with firearms or explosives.

Terrorists are not diplomats, regardless of any title they may have assumed or protection they may have enjoyed prior to their terrorist actions.

Last year's tragic "shoot-out" at the Libyan Embassy in London and the news that those suspected of firing the machine guns were protected by diplomatic immunity alerted the world to the new nightmare of the so-called "terrorist-diplomat."

The inherent contradiction in this term is clear. I have introduced legislation aimed at preventing any recurrence of grotesque spectacle of terrorists walking away from prosecution behind the shield of diplomatic immunity. We must make it clear that murder is not, and can never be, protected diplomatic activity.

Article 31 of the Vienna Convention states: "A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State." The convention thus codified a tradition of many centuries. Justice, it was assumed, would be done by the sending State.

Yet, that assumption abrogates all justice in a situation of State-sponsored terrorism. In that circumstance, obviously, the sending State will reward rather than prosecute its agent. Again, the shooting in London illustrates the problem. News reports asserted that Embassy personnel had received electronic communications from Tripoli instructing them to shoot the Libyan dissidents demonstrating near the Embassy. The result, as the whole world knows, is that 11 students were injured and a British policewoman was shot to death. No Libyans were ever prosecuted for this violence.

The grant of immunity in the Vienna Convention should be revised to allow the receiving State to prosecute diplomats for murder and other armed offenses against persons.

Critics of this proposal will argue that the present unqualified immunity protects American diplomats in hostile nations such as Eastern bloc countries and the Soviet Union. With the revisions, it would still do so.

It is inconceivable that this country or any other law-abiding country would instruct or permit diplomats to use firearms to assault political opponents. Therefore, the revisions would not limit the proper functioning of our diplomatic agents. Nor could armed assault charges such as murder by firearm be readily brought on manufactured evidence. Diplomats of all countries would continue to be immune from prosecution for the sort of charges that could readily be trumped up, such as espionage or fraud.

If there is a slight risk that some country might fabricate evidence against our Ambassador that he shot someone, even though the fabrication would be obvious, that risk is worth taking. Otherwise, fanatical and lawless States such as Iran, Syria, and Libya will be encouraged to turn their embassies into nests of terror from which murder can be routinely dispensed with impunity.

Nor is it sufficient in the face of these death squads to argue that the receiving State can adequately protect itself by expelling the terrorist-diplomat after the fact. He or she can and will simply be replaced by a new terrorist-diplomat. Assassinations will continue.

Some may argue that revising the terms of immunity will be insufficient to deter murders by fanatics employed by murderous governments. This may be so in some cases. There is a great difference, however, between surreptitious assassinations by secret agents of a foreign power and overt shootings from Embassy windows. Both are intolerable, but the latter makes the victim State compound the crime by forcing it to release the criminal.

No doubt it will take years to revise the Vienna Convention, but merely making the proposal will make a difference. It will put nations on notice that the world community will not tolerate another London.

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## SENATE RESOLUTION 196—CONCERNING INTERNATIONAL AIRPORT SAFETY

Mr. SPECTER submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. Res. 196

Whereas the world has recently witnessed three terrorist skyjackings in as many days;

Whereas 167 skyjacking attempts on U.S. and foreign aircraft occurred between 1980 and 1984;

Whereas these terrorist acts threaten not just the targeted nations but democracy everywhere;

Whereas there is strong evidence that security measures at the Athens airport were unacceptably lax and, thus, contributed to the current hijacking tragedy;

Whereas the universal interest in halting hijackings has prompted unified action in the past resulting in the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation; the Hague Convention for the Suppression of Unlawful Seizure of Aircraft; and the Tokyo Convention on Offenses and Certain Other Acts Committed On Board Aircraft;

Whereas signatories to these international agreements include over 130 nations;

Whereas the heads of state of the seven economic summit partners jointly agreed in July, 1978, in the "Bonn Declaration," that in cases where a country refuses extradition or prosecution of aircraft hijackers, their governments would both cease all flights to that country and take action to halt all incoming flights from that country; and

Whereas the United States should assume a leadership role in a unified effort to protect the security of international airline passengers and crew; Now, therefore, be it

*Resolved*, That it is the sense of the Senate that the President should immediately take steps to halt all U.S. carrier traffic into and out of Athens airport and should promptly consult with the heads of state of the seven economic summit partners who signed the "Bonn Declaration" to urge them to join us in an international boycott of the Athens airport unless that country agrees to take immediate action to bring its security measures up to internationally acceptable standards, and to join us in similar action with respect to other international airport facilities determined to be inadequately adhering to those standards for aircraft security. In addition, the President should call a meeting of the signatories of international anti-hijacking agreements to formulate a coherent response to the most recent rash of hijackings, including the establishment of an International Commission on Airport Safety to certify as to the adequacy of security measures at all international airports as a basis for an international boycott of facilities failing to meet international standards.

Mr. SPECTER. Mr. President, I am introducing today a resolution calling on the President of the United States to immediately take steps to halt all U.S. carrier traffic into and out of Athens Airport. The resolution also calls on the President to promptly con-

sult with the heads of state of the seven economic summit partners who joined in the Bonn Declaration on hijackers to urge them to join us in an international boycott of the Athens Airport unless Greece takes immediate action to bring its security measures up to internationally acceptable standards, and to join us in similar action with respect to other international airport facilities determined to be inadequately adhering to these standards for aircraft security. In addition, the resolution urges the President to convene a meeting of signatories to the Montreal Convention of 1971 and of the Hague Convention of 1970 and the Tokyo Convention of 1963, all relating to skyjackings and aviation security, to put together an independent International Commission on Airport Security that would investigate and certify the adequacy of security measures at all international airports to lay the foundation for international standards.

We cannot continue to pay the price for lax or corrupt security procedures in foreign airports. It is time to take an active role in ensuring the safety of passengers not just on international flights leaving the United States, but on all international flights.

As an interim step, I am asking the Secretary of State to initiate an immediate investigation of the security measures at Athens Airport and other international airports where security is believed to be inadequate and to determine what steps can be taken to improve security and whether the United States should take action unilaterally to suspend American carrier flights into and out of those facilities.

In addition, placing a security officer on every international flight of U.S. carriers and banning carry-on luggage for such international flights should be considered by the international convention signatories as part of a comprehensive international response to the universal threat.

In the final analysis, however, only a cooperative international effort to develop and enforce security standards will lead to worldwide improvement in the safety of air travelers from terrorists.

This resolution is a first and urgently needed step in that direction.

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*No. 92—Part II*

# Congressional Record

United States of America

PROCEEDINGS AND DEBATES OF THE 99th CONGRESS, FIRST SESSION

*Vol 131* WASHINGTON, THURSDAY, JULY 11, 1985 *No. 92—Part II*


## *Senate*

THURSDAY, JULY 11, 1985

*(Legislative day of Monday, July 8, 1985)*

By Mr. SPECTER:

S. 1429. A bill to amend title 18, United States Code, to authorize prosecution of terrorists who attack United States nationals abroad, and for other purposes; to the Committee on the Judiciary.

TERRORIST PROSECUTION ACT

● Mr. SPECTER. Mr. President, today I am introducing the Terrorist Prosecution Act of 1985 to expand U.S. law by making it a crime for anyone in any country to assault or kill any U.S. national as part of an act of international terrorism.

This bill supplements legislation I introduced earlier this session, S. 1215, in that it makes it clear that the assault or murder intended to be covered is that which is part of an act of international terrorism, as defined in the Foreign Intelligence Surveillance Act, 50 U.S.C. 1801(c).

At the heart of these and other legislative initiatives I have been have been pushing for approximately a year now, is the fundamental notion that international terrorists are criminals and ought to be treated as such—they should be promptly located, apprehended, and brought to trial for their heinous crimes.

When President Reagan addressed the American Bar Association earlier this week, he made it clear that just such a policy will be applied, telling the lawyers that "we must act against the criminal menace of terrorism with the full weight of the law—both domestic and international. We will act to indict, apprehend and prosecute those who commit the kind of atrocities the world has witnessed in recent weeks."

This is a new emphasis in administration policy, and I applaud it.

For many years, about a quarter of a century, I have been concerned with fighting criminals, and terrorists are international criminals. They have to be dealt with as criminals, and I think they can be dealt with effectively as criminals. To catch them, to prosecute them, to punish them, and to deter other criminals, other terrorists, by the example of our tough approach to the terrorists—that is the way our criminal justice system works, and it can work in the international field as well if we enact the necessary legislation.

Last year we enacted the hostage taking and aircraft sabotage legislation to provide U.S. courts with extraterritorial jurisdiction over those international activities, but there remains a critical gap in our arsenal against terrorism: murder of U.S. citizens outside our borders, other than officially designated Government officials and diplomats, is not a crime under U.S. law.

I was stunned to realize that from responsible for murdering over 100 U.S. citizens while they were in their barracks in Lebanon are not guilty of any U.S. crime for their murder. Limiting the penalties only those who assault our diplomats. Under my bill, when a U.S. citizen or any other American is killed or wounded, as in Lebanon, the terrorists can be arrested and the culprits can be brought to this country and prosecuted.

This bill would permit the prosecuting diplomats and other "internationally protected persons," found in 18 U.S.C. 112 and 1116, but extends the protection to all U.S. nationals, while making it clear that it is aimed at international terrorism, not bar room brawls.

This act will in no way contravene or conflict with other international or constitutional law. While criminal jurisdiction is customarily limited to the place where the crime occurred, it is well established constitutional doctrine that Congress has the power to apply U.S. law extraterritorially if it so chooses. (See for example, United States v. Bowman, 260 U.S. 94, 98 (1922)).

International law also recognizes broad criminal jurisdiction. If an infamous crime occurs in a foreign country, a nation may still exercise jurisdiction over the defendant if the crime has a potential adverse effect upon the security or the operation of its governmental functions. The basis for jurisdiction over crimes committed outside the United States has been applied to the federal courts in customs cases arising from drug smuggling to secure. Clearly, then, the exercise of U.S. criminal jurisdiction is also justified to prosecute the terrorist who assaults or murders American nationals abroad as a means of affecting U.S. policy. Such attacks undoubtedly have an adverse affect upon the conduct of the Government's foreign affairs, and potentially threaten the security interest of the United States as well.

By making terrorist murder a U.S. crime, ours will not protect Americans abroad. We must also demonstrate our seriousness by meeting the act with force determination.

In many cases, the terrorist murder of all is committed to extort ends the

United States of America

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 99th CONGRESS, FIRST SESSION

Vol. 131 WASHINGTON, FRIDAY, JULY 26, 1985 No. 102

## Senate

*(Legislative day of Tuesday, July 16, 1985)*

By Mr. SPECTER:

S. 1508. A bill to amend title 18, United States Code, to authorize the death penalty for first-degree terrorist murder, and for other purposes; to the Committee on the Judiciary.

TERRORIST DEATH PENALTY ACT

Mr. SPECTER. Mr. President, I am today introducing legislation to provide that terrorists who murder U.S. citizens during a hostage-taking would be subject to the death penalty.

This bill incorporates the carefully drafted death penalty procedures and standards which were adopted by the full Senate in February 1984, in S. 1765—no House version of the bill passed. The consensus at that time was that the procedures and standards in S. 1765—and now set forth in my bill—fully satisfied the constitutional requirements prescribed by the U.S. Supreme Court in its consideration of the death penalty.

I strongly believe that international terrorists who take an American hostage and then murder that person deserve the death penalty. Too often in the recent past, our approach to terrorism has been soft. In the wake of each new terrorist act, we engage in national handwringing and tough talk, but take little or no serious action. Terrorists are criminals, and should be dealt with as criminals. The same concepts of likely apprehension and swift, certain, and severe punishment that underlie our criminal justice system can and should have effective application to international criminals as well.

Punishment and deterrence can work in the international field, however, only if we enact the necessary legislation. Current law provides for the death penalty where a death results from the seizure of an aircraft (49 U.S.C. sec. 1472(i)). It is not clear that the murderers of Navy diver Robert Stethem in the recent TWA hijacking would be subject to that provision, however, because the killing occurred after the hijackers had gained control over TWA flight 847, not as a direct result of the hijacking. The statute under which the TWA hijackers clearly can be prosecuted is 18 U.S.C. 1203, which prohibits hostage taking. The hostage taking statute, however, does not provide for the death penalty.

The legislation I introduce today would close this statutory gap by amending the existing hostage-taking statute to permit application of the death penalty upon a conviction for first degree murder. While it of course cannot have retroactive application to the murderers of Robert Stethem, it would serve as a deterrent to—or a well-deserved punishment for—any similar atrocities in the future.

I recently met with the Byron family of Harrisburg, PA, who were passengers on TWA flight 847. I discussed with Lee and Carolyn Byron and their 13-year-old daughter, Pamela, their horrible experiences. They described the brutal beating of Robert Stethem and the abuse they themselves suffered at the hands of the terrorist hijackers.

If we learn nothing else from our painful experiences in Lebanon, we should learn that the one thing terrorists respond to is power. We know we must act swiftly and strongly in response to threats to U.S. nationals. Inclusion of the death penalty in the existing statutes relating to murder of U.S. nationals by terrorists is, in my view, essential if we are to make a strong, effective, and complete response to such acts of violence.

Earlier in this Congress, I introduced S. 1373 and S. 1429, modified versions of S. 3018, which I first introduced in the 98th Congress. S. 1373 and S. 1429 would expand U.S. law by making it a crime for anyone in any country to assault or kill any U.S. national as part of an act of international terrorism. It is my hope that those bills will generate serious discussion about how best to combat international terrorism. I would favor amendment of those earlier bills so that they also would provide for the death penalty in the event of egregious terrorist murders of U.S. citizens. I did not provide for the death penalty in S. 1373 or S. 1429 in order to expedite the passage of these bills. When these bills are considered on the floor, I intend to add the death penalty provision, but if the death penalty provision cannot be passed or if it is file bracketed then we should at least enact the subcommittee provisions of S. 1373 and S. 1429.

I emphasize, however, that the bill I introduce today in no way changes the elements of a violation of the existing statute relating to hostage taking. Rather, it simply makes the death penalty available for violations of that statute, just as Congress already has provided for the availability of the death penalty in the hijacking statute (42 U.S.C. sec. 1472(i)).

I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1508

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Terrorist Death Penalty Act of 1985."

SEC. 2. (a) Part I of title 18, United States Code, is amended by inserting after chapter 113 the following:

CHAPTER 113A—DEATH PENALTY FOR TERRORIST MURDER

"Sec.

"2331A. Death Penalty for Terrorist Murder.

"Section 2331A. Death Penalty for terrorist murder.

"(a) SENTENCE OF DEATH.—A defendant who has been found guilty of first degree murder under section 1203(a), shall be sentenced to death if, after consideration of the factors set forth in paragraph (1) of this subsection in the course of a hearing held pursuant to this subsection, it is determined that imposition of a sentence of death is justified.

"(1) FACTORS TO BE CONSIDERED IN DETERMINING WHETHER A SENTENCE OF DEATH IS JUSTIFIED

"(A) MITIGATING FACTORS.—In determining whether a sentence of death is justified for any offense, the jury, or if there is no jury, the court, shall consider each of the following mitigating factors and determine which, if any, exist:

"(i) the defendant was less than eighteen years of age at the time of the offense;

"(ii) the defendant's mental capacity was significantly impaired, although the impairment was not such as to constitute a defense to prosecution;

"(iii) the defendant was under unusual and substantial duress, although not such duress as would constitute a defense to prosecution; and

"(iv) the defendant was an accomplice whose participation in the offense was relatively minor.

The jury, or if there is no jury, the court, may consider whether any other mitigating factor exists.

"(B) AGGRAVATING FACTORS.—In determining whether a sentence of death is justified, the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist:

"(i) the defendant has previously been convicted of another offense for which either a sentence of life imprisonment or death was authorized by statute; or

"(ii) in the commission of the offense the defendant knowingly created a grave risk of death to another person.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor exists.

"(2) SPECIAL HEARING TO DETERMINE WHETHER A SENTENCE OF DEATH IS JUSTIFIED

"(A) NOTICE BY THE GOVERNMENT.—If the attorney for the Government believes that the circumstances of the offense are such that a sentence of death is justified under this section, he shall, a reasonable time before the trial, or before acceptance by the court of a plea of guilty, or at such time thereafter as the court may permit upon a showing of good cause, sign and file with the court, and serve on the defendant, a notice—

"(i) stating that the government believes that the circumstances of the offense are such that, if the defendant is convicted, a sentence of death is justified under this chapter; and

"(ii) setting forth the aggravating factor or factors that the government, if the defendant is convicted, proposes to prove as justifying a sentence of death.

The court may permit the attorney for the government to amend the notice upon a showing of good cause.

"(B) HEARING BEFORE A COURT OR JURY.—If the attorney for the government has filed a notice as required under subsection (a) and the defendant is found guilty, the judge who presided at the trial or before whom the guilty plea was entered, or another judge if that judge is unavailable, shall conduct a separate sentencing hearing to determine the punishment to be imposed. Prior to such a hearing, no presentence report

shall be prepared by the United States Probation Service, notwithstanding the provisions of Rule 32(c) of the Federal Rules of Criminal Procedure. The hearing shall be conducted—

"(i) before the jury that determined the defendant's guilt;

"(ii) before a jury impaneled for the purpose of the hearing if—

the defendant was convicted upon a plea of guilty;

the defendant was convicted after a trial before the court sitting without a jury;

the jury that determined the defendant's guilt was discharged for good cause; or

after initial imposition of a sentence under this section, reconsideration of the sentence under this section is necessary; or

"(iii) before the court alone, upon the motion of the defendant and with the approval of the attorney for the government.

A jury impaneled pursuant to paragraph (ii) shall consist of twelve members, unless, at any time before the conclusion of the hearing, the parties stipulate, with the approval of the court, that it shall consist of a lesser number.

"(C) PROOF OF MITIGATING AND AGGRAVATING FACTORS. At the hearing, information may be presented as to any matter relevant to the sentence, including any mitigating or aggravating factor permitted or required to be considered. Information presented may include the trial transcript and exhibits if the hearing is held before a jury or judge not present during the trial. Any other information relevant to a mitigating or aggravating factor may be presented by either the attorney for the government or the defendant, regardless of its admissibility under the rules governing admission of evidence at criminal trials, except that information may be excluded if its probative value is substantially outweighed by the danger of creating unfair prejudice, confusing the issues, or misleading the jury. The attorney for the government and the defendant shall be permitted to rebut any information received at the hearing, and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any aggravating or mitigating factor, and as to the appropriateness in the case of imposing a sentence of death. The attorney for the government shall open the argument. The defendant shall be permitted to reply. The attorney for the government shall then be permitted to reply in rebuttal. The burden of establishing the existence of any aggravating factor is on the government, and is not satisfied unless the existence of such a factor is established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant, and is not satisfied unless the existence of such a factor is established by a preponderance of the information.

"(D) RETURN OF SPECIAL FINDINGS. The jury, or if there is no jury, the court, shall consider all the information received during the hearing. It shall return a special finding as to each mitigating and aggravating factor, concerning which information is presented at the hearing. The jury must find the existence of a mitigating or aggravating factor by a unanimous vote, although it is unnecessary that there be a unanimous vote on any specific mitigating or aggravating factor is a majority of the jury finds the existence of such a specific factor.

"(E) RETURN OF A FINDING CONCERNING A SENTENCE OF DEATH.—If an aggravating factor is found to exist; the jury, or if there is no jury, the court, shall then consider whether all the aggravating factors found to exist sufficiently outweigh all the mitigating factors found to exist to justify a sentence of death, or, in the absence of a mitigating factor, whether the aggravating factors alone are sufficient to justify a sentence of death. Based upon this consideration, the jury by unanimous vote, or if there is no jury, the court, shall return a finding as to whether a sentence of death is justified.

"(F) SPECIAL PRECAUTION TO ASSURE AGAINST DISCRIMINATION.—In a hearing held before a jury, the court, prior to the return of a finding under subsection (E), shall instruct the jury that, in considering whether a sentence of death is justified, it shall not consider the race, color, national origin, creed, or sex of the defendant. The jury upon return of a finding under subsection (E) shall also return to the court a certificate, signed by each juror, that consideration of the race, color, national origin, creed, or sex of the defendant was not involved in reaching the juror's individual decision.

"(3) IMPOSITION OF A SENTENCE OF DEATH

"Upon a finding that a sentence of death is justified, the court shall sentence the defendant to death. Upon a finding that a sentence of death is not justified, the court shall impose any sentence other than death that is authorized by law, if the maximum term of imprisonment for the offense is life imprisonment the court may impose a sentence of life imprisonment without parole.

"(4) REVIEW OF A SENTENCE OF DEATH

"(A) APPEAL.—In a case in which a sentence of death is imposed, the sentence shall be subject to review by the court of appeals upon appeal by the defendant. Notice of appeal must be filed within the time specified for the filing of a notice of appeal. An appeal under this section may be consolidated with an appeal of the judgment of conviction and shall have priority over all other cases.

"(B) REVIEW.—The court of appeals shall review the entire record in the case, including—

"(i) The evidence submitted during the trial;

"(ii) the information submitted during the sentencing hearing.

"(iii) the procedures employed in the sentencing hearing; and

"(iv) the special findings returned.

"(C) DECISION AND DISPOSITION.—

"(i) If the court of appeals determines that the sentence of death was not imposed under the influence of passion, prejudice, or any other arbitrary factor; and the information supports the special finding of the existence of an aggravating factor required to be considered, it shall affirm the sentence.

"(ii) In any other case, the court of appeals shall remand the case for reconsideration.

"(iii) The court of appeals shall state in writing the reasons for its disposition of an appeal of a sentence of death under this section.

"(5) IMPLEMENTATION OF A SENTENCE OF DEATH

"A person who has been sentenced to death pursuant to the provisions of this chapter shall be committed to the custody of the Attorney General until exhaustion of the procedures for appeal of the judgment of conviction and for review of the sentence. When the sentence is to be implemented, the Attorney General shall release the person sentenced to death to the custody of a United States marshal, who shall supervise implementation of the sentence in the manner prescribed by the law of the State in which the sentence is imposed. If the law of such State does not provide for implementation of a sentence of death, the court shall designate another State, the law of which does so provide, and the sentence shall be implemented in the latter State in the manner prescribed by such law. A sentence of death shall not be carried out upon a woman while she is pregnant.

"(6) USE OF STATE FACILITIES

"A United States marshal charged with supervising the implementation of a sentence of death may use appropriate State or local facilities for the purpose, may use the services of an appropriate State or local official or of a person such an official employs for the purpose, and shall pay the costs thereof in an amount approved by the Attorney General.

(b) The table of chapters for part I of title 18, United States Code, is amended by inserting after the item for Chapter 113, the following:

CHAPTER 113A—DEATH PENALTY FOR TERRORIST MURDER

"113A—Death Penalty for Terrorist Murder ..... 2321A"

(c) Section 1203(a) of title 18, United States Code, is amended as follows: at the end of the paragraph strike "." and add ", except that, if death results, any such person who is found guilty of first degree murder shall be sentenced as provided in section 2321A of this title."

Senator SPECTER. The basic thrust of this legislation is to establish jurisdiction in the courts of the United States of America to protect U.S. interests around the world when they are attacked by terrorism, and to bring terrorists back to the United States for trial, in accordance with accepted principles of American jurisprudence.

The broad range of actions against terrorism extends to trade sanctions, as embodied in legislation to cut off trade with Libya, which has been passed by both Houses and is before a joint committee; it extends to proposals which we have introduced on establishing an international tribunal to declare terrorism an international crime like piracy, so that the terrorists may be prosecuted wherever they may be found, as pirates may be prosecuted wherever they may be found, in derogation of the general principle that a defendant is prosecutable only in the jurisdiction where the offense was committed.

But those remedies will take a longer period of time, and my sense is that we ought to move in a direct line to define crimes which are violations of the laws of the United States; we ought to apprehend the terrorists, and we ought to bring them to the United States for trial and, if convicted, they ought to be punished. There is legislation on the books now, as a result of the 1984 Omnibus Crime Act, which would authorize prosecution of the three hijackers who hijacked the TWA plane and brutally murdered the Navy diver, Stethem.

It is my view that we ought to offer rewards for the apprehension of those terrorists who have been identified in Lebanon, just as rewards have been offered for the Salvadoran terrorists who murdered the U.S. Marines recently in El Salvador, and that we ought to use the authority which the Secretary of State and the State Department now have to make these rewards, now that the terrorists have been identified. We ought to seek to bring those terrorists back to the United States, to international extradition, and there are procedures available to accomplish that. And, absent our ability to accomplish their return to the United States through international extradition, it is my firm view that we should give serious consideration to using reasonable force to place those terrorists into custody and to bring them back to the United States for trial in a U.S. Federal court.

News reports have already noted that a grand jury is in process in Washington, DC, to return indictments against the three terrorists who hijacked the TWA plane under the 1984 legislation that I have already referred to.

A report in the New York Times last Thursday noted that Federal authorities have not ruled out the possibility of abduction, which was the term used in the New York Times story.

I prefer to call the procedure an international arrest, but I would not shy away from the term "abduction." And I would emphasize to this subcommittee that it is entirely legal and appropriate, in accordance with international rules of law and with United States law. I would refer this subcommittee to the case of *Ker* v. *Illinois,* a case decided by the Supreme Court of the United States in 1886, on a very unusual set of facts.

Ker was under indictment by the State of Illinois on a fraud charge. Illinois authorities went to Peru and took Ker into custody; they arrested him. Or, you might say, they abducted him, or you might say that they kidnaped him. He was brought back to the United States, tc Illinois, and he was tried and convicted, and the case went to the Supreme Court of the United States, which upheld the conviction.

That principle of law has been upheld repeatedly in the Federal courts, and Justice Hugo Black, a noted civil libertarian, has an opinion on this subject, upholding the principle of law that a conviction is entirely appropriate when a person is returned from outside the United States for trial in the United States, which is a very important principle to focus on.

When we talk about getting tough with terrorists, our Government has been criticized roundly for tough talk and no tough action. I do not believe that the United States can participate in retaliatory rage where innocent as well as guilty parties may be damaged, injured, or killed. But I do believe that we can be tough in bringing back to the United States suspects, defendants, who have been indicted in accordance with U.S. principles of law, where probable cause has been established through competent evidence, and a warrant of arrest has been issued. They can be taken into custody and be returned to the United States for trial. That is the course which I firmly believe ought to be followed with the three international terrorists. Let us obtain their custody voluntarily from Lebanon, if we can, through international principles, through treaties which exist on extradition. But if that is not possible, then I think we ought to make the arrest with reasonable force in whatever way is doable. And this is really no different than principles of making an arrest when I was district attorney in Philadelphia, and a criminal was barricaded inside a building and had taken hostages and had to be waited out, had to be subdued, had to respond to a warrant of arrest which was issued in accordance with lawful principles. And those warrants can be obtained from a Federal court in this country, and they ought to be executed.

Israel went into Argentina and took Eichmann to trial in Israel, and that is a principle with a very distinguished opinion, a legal principle which backs up the decision of the Supreme Court of the United States in the *Ker* case. And I submit to this subcommittee that that is the kind of conduct and activity which ought to be implemented.

The legislation which I have introduced today goes beyond the provision making it illegal to hijack American planes. I believe that we ought to have a law making it illegal under the laws of the United States to have a terrorist act against any citizen of the United States anywhere in the world.

The murder of the Navy diver by the hijackers would not be covered under existing legislation, because that murder is probably not incidental or directly related to the hijacking of the plane; it came after the event, and the principles of criminal law call for strict instruction.

But it is my judgment that when U.S. citizens are the victims of terrorist anywhere in the world, it is an appropriate interest of the United States to exercise extraterritorial jurisdiction which is well

accepted under international principles of law. And our laws ought to reach anywhere in the world to protect U.S. interests and U.S. citizens from acts of terrorism.

I have also introduced S. 1508, which would provide for the death penalty for acts similar to the murder of the Navy diver. This bill cannot apply to what has already taken place, and unfortunately, the terrorists would not be subjected to the death penalty for the murder of the Navy diver, because existing law only provides for a term of imprisonment for up to 20 years. But it would be a remarkable act if we exercised our sovereign jurisdiction to bring those three terrorists back to this country, to prosecute them in a U.S. court, to convict them in a U.S. court, and sentence them to a U.S. prison.

The legislation now under consideration would broaden the sweep of a remedy for a tax against U.S. citizens by terrorists and would provide for the death penalty, which I think ought to be our course for the future.

Thank you, Mr. Chairman.

Senator DENTON. Thank you, Senator Specter, and again, we want to thank you for your contribution to the legislation necessary to establish some basis of policy. Legislation, of course, is not the only answer, but it does represent an important weapon in the fight against terrorism. However, we are in a relatively primative stage. To put this in context, the Montreal Convention—respecting aircraft sabotage—was not even implemented by U.S. law until the second session of the 98th Congress. The subcommittee, with the help of the ranking minority member Senator Leahy and other members, were instrumental in passing the necessary legislation. We also passed S. 2624 to implement the U.N. Convention, which lends extraterritorialty to the issue of hostage taking, makes it an international offense by American law, by our national law.

We have provided, by S. 2625, up to $500,000 in rewards. The reward money was in a very pittanced category before that, and that reward money was used, and has been used just recently, to offer rewards for the marines who were killed in El Salvador.

We are currently working on an omnibus bill which will be coming out within a couple of months, respecting the overall spectrum of terrorism, and we have such bills as S. 2626 which would authorize the Secretary of State by law to undertake sweeping initiatives respecting sanctions against countries which are designated as terrorist. That is in a relatively early stage of development, and some aspects of it were taken care of in the arms-trafficking regulations recently implemented.

I turn now to a man who has been helpful over the years, with tremendous assistance to afford because of his position on the Intelligence Committee and his qualifications as a Senator and as a lawyer, my friend from Vermont, Senator Pat Leahy.

## OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Senator LEAHY. Thank you very much, Mr. Chairman.

I am glad you are holding these hearings. I think these are extremely important issues. I had a moment of déja vù when I heard

our distinguished witness, my good friend and colleague from Pennsylvania, speak of his district attorney's days, because he and I first met when we were both district attorneys. In fact, the first meeting I went to as a new member of the board of directors of the National District Attorneys' Association was one hosted by Senator Specter in Philadelphia. And I know of what he speaks when he mentions the law enforcement aspect of this. When I was a prosecutor in Vermont—a State that bordered on another country—we sometimes had to consider both the technical ways of doing things and the practical ways of doing things. There were a number of times, with the cooperation of the Canadian authorities, that the people we looked for were escorted to the border and then released from the car door nearest the mountie's car, and invariably in the most amazing coincidence, the Vermont sheriff was standing right there when they did. I am not sure that we always got the best of all deals; I think Canada was really happy to get rid of some of these people.

So I think that in the matter of international terrorism, the laws raise some very substantive matters; but before we even talk about these laws, I think that we have got to be in a far better position to both anticipate and know where terrorists are. We are improving, certainly, in our intelligence capabilities in that regard, but we have a long way to go.

We do not have adequate intelligence in the Middle East and Europe, and that is especially critical at a time when a lot of terrorism is going to be exported to the United States unless we are able to stop it over there. The infrastructures of some of these terrorist groups are already within the borders of the United States, and we must take steps.

I do not know if this is the appropriate time, Mr. Chairman, but I have a couple of quick questions for Senator Specter while he is here.

Senator DENTON. I was not going to ask any, because his testimony was so comprehensive, but I was going to offer the opportunity to the rest of the members.

Senator LEAHY. Fine. I am sorry.

Senator DENTON. May I start with Senator Hatch. Do you have any questions, sir?

Senator HATCH. I do. I notice in your S. 1429, under paragraph C, "For the purposes of this section, 'international terrorism' is used as defined in the Foreign Intelligence Surveillance Act, in title 50, section 181(c)."

Now my question is—has the definition of terrorism found in the Foreign Intelligence Surveillance Act been upheld by the courts, in your opinion?

Senator SPECTER. Senator Hatch, I do not know what the judicial decisions are, but I think it is a sound definition.

Senator HATCH. I think it is, too, and I believe it has been upheld by the courts.

Do you see any possible problems with that definition?

Senator SPECTER. I do not. Terrorism is not easy to define. That definition has been used after a lot of deliberation, and I think it is a good one.

Senator HATCH. OK. Is not the extradition process an important element in making your proposals on these two bills effective?

Senator SPECTER. Yes; it is, Senator Hatch, and there are provisions under international treaties for extradition. And as I said, that would be my preference. But absent that, I am very much concerned about what would happen if there were to be a trial in Lebanon of these three terrorists. I do not think Lebanon has a government which could protect the courts, even if they were military courts. And I would not like to see the terrorists tried in the Lebanese court, perhaps acquitted, facing issues of double jeopardy. I think this is a place where we have a real right to assert our national interests.

Senator HATCH. Do you know, Senator Specter, what is the record of cooperation in extradition matters between the United States and other countries?

Senator SPECTER. Well, there are extradition treaties between the United States and many other countries. I worked with them as district attorney, and we had people returned through extradition relatively routinely. It is a little different matter when we seek to extradite someone for commission of an act in the other country, so we have got to be a little bit bold here.

But the point that I underscore is that every step I have outlined is in accordance with established legal principles.

Senator HATCH. Now, as I understand it, you raised the issue of the U.S. Navy diver who was aboard a U.S.-flag air carrier. Now, that would make the murder a crime committed in U.S. territory because he was murdered on a U.S.-flag air carrier. So I think under international law, that would make it a crime committed on U.S. territory.

But I do not think that would be the case if he was murdered in another flag air carrier. Your bill would seem to take care of that.

Senator SPECTER. Definitely; there is an issue as to whether it would be covered under the existing circumstances for murder, and I believe we ought to lay all those issues to rest.

Senator HATCH. So you are saying the legislation you are proposing would do that.

Senator SPECTER. Absolutely.

Senator HATCH. I commend you for it. Now, you raised the issue of Adolf Eichmann. The Israelis were denounced by a majority of the U.N. members for the kidnaping of Adolf Eichmann, and they did make some sort of an apology after the fact. Should this world community attitude affect U.S. policy in any way in the future, if your bills are enacted?

Senator SPECTER. Well, I believe that the time has come to fight international terrorism with every legitimate means at our disposal, and it is my view that terrorism is another way of waging war. It is an extension of war, but only the terrorists are at war. The United States is not at war. And I believe we have to structure some new international remedies to be built on existing precedents, and if we articulate these remedies properly, and if we carry them out properly, I think we can establish a rule of law which will be recognized and sanctioned and upheld by world public opinion. And we have to look for the least forceful way of asserting our interests. And when we consider the range of activities, whether we are

going to have a military expedition in Lebanon, whether their proposal to decimate the Beirut Airport, or to have retaliatory attacks on Lebanese military installations, or a variety of courses, this is by far the least possible course to be used to deal with the specific problem at hand.

That is why I think if we structure it carefully, that world public opinion will be with us. If you read the opinion of the Israeli court in the Eichmann case, it makes a lot of sense. If you read the opinion of the Supreme Court of the United States in *Ker* v. *Illinois*, it makes a lot of sense. And those are a very good starting point.

Senator HATCH. Well, I want to compliment you, because these proposals give a constitutional foundation to the view of terrorism as an international crime in international law, just as I think *United States* v. *Smith*, an 1818 case, requires domestic statutes for the prosecution of piracy. So I think what you have done, and with a lot of legal erudition, is to come up with what appear to be simple bills, but are not, in that they may very well put some teeth into our criminal laws with regard to these international acts of terrorism. In my view, it is a tremendous thing that you are trying to accomplish here. I want to compliment you for the efforts that you have put forth in doing so.

Senator SPECTER. Thank you very much, Senator.

Senator HATCH. Thank you, Mr. Chairman.

Senator DENTON. Judge Sofaer will be complementing the information which Senator Specter has briefly referred to regarding substantiation that the Foreign Surveillance Intelligence Act does indeed support the features in Senator Specter's proposed legislation, and that will be gone into in detail.

Senator Leahy.

Senator LEAHY. Thank you, Mr. Chairman.

I notice that both S. 1373 and S. 1429 permit the Attorney General to call on a number of Federal agencies, including the military, to assist the Attorney General in enforcing the provisions of the act.

One difference is that S. 1373's list is slightly different than S. 1429's; S. 1373 includes the CIA. Would you envision the CIA being used to apprehend suspects overseas?

Senator SPECTER. I do not think that they would be involved in the actual apprehension as a matter of course, but I would not rule out using any of our instrumentalities of law.

Senator LEAHY. Would this be the kind of law enforcement activity that, if it were to be passed, would require the National Security Act to be amended to enable the CIA to be on the Attorney General's list? Currently, the act prohibits the CIA from engaging in law enforcement activities.

Senator SPECTER. Senator Leahy, I do not think so, but that is a consideration that we ought to take up. I would not want to make a definitive statement on it.

Senator LEAHY. It raises an important issue. I might suggest that you and whoever has been working on the bill may want to look at that particular question, and perhaps even talk to the counsel on the Intelligence Committee.

Senator SPECTER. I think that is a good point.

Senator LEAHY. In S. 1373, an element of the crime is that the victim be a citizen of the United States, and in S. 1429, a national of the United States. Does this mean that in S. 1429 the victim could be a non-U.S. citizen and still allow jurisdiction, or would you contemplate it applying to a U.S. citizen?

Senator SPECTER. No; I am thinking of it being a U.S. citizen.

Senator LEAHY. Well, as the chairman said, we have been pushing in this committee for the ability to be able to bring the arm of the United States to bear in some of these cases.

I would say, Mr. Chairman, that I am impressed with the list of witnesses that you have here today, all extremely good witnesses—Mr. Sofaer from the Department of State; Bob Oakley, who has to deal with this every single day; Dr. Cline, who is one of the most articulate people, both back in the days when he had to sit behind closed doors to talk about the issues, and today, when he has given as much, as clear, and as precise testimony as one could on the national news; and of course, those who were hostages. Once we get past the technical aspects, the hostages probably have the most compelling testimony here. I compliment you, Mr. Chairman, on putting together this list, which is a superb one.

Senator SPECTER. If the gentleman would yield, Mr. Chairman, I would ask unanimous consent that the opinions in *Ker* and *Frisbie* be made a part of the record so that people may see those cases, and the power and the principles they stand for.

Senator DENTON. So ordered.

[Court opinions referred to above follow:]

Syllabus.

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## KER *v.* ILLINOIS.

ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

Argued April 27, 1886. — Decided December 6, 1886.

A plea to an indictment in a State court, that the defendant has been brought from a foreign country to this country by proceedings which are a violation of a treaty between that country and the United States, and which are forbidden by that treaty, raises a question, if the right asserted by the plea is denied, on which this court can review, by writ of error, the judgment of the State court.

But where the prisoner has been kidnapped in the foreign country and brought by force against his will within the jurisdiction of the State

whose law he has violated, with no reference to an extradition treaty, though one existed, and no proceeding or attempt to proceed under the treaty, this court can give no relief, for these facts do not establish any right under the Constitution, or laws, or treaties of the United States.

The treaties of extradition to which the United States are parties do not guarantee a fugitive from the justice of one of the countries an asylum in the other. They do not give such person any greater or more sacred right of asylum than he had before. They only make provision that for certain crimes he shall be deprived of that asylum and surrendered to justice, and they prescribe the mode in which this shall be done.

The trespass of a kidnapper, unauthorized by either of the governments, and not professing to act under authority of either, is not a case provided for in the treaty, and the remedy is by a proceeding against him by the government whose law he violates, or by the party injured.

How far such forcible transfer of the defendant, so as to bring him within the jurisdiction of the State where the offence was committed, may be set up against the right to try him, is the province of the State court to decide, and presents no question in which this court can review its decision.

The plaintiff in error, being convicted of embezzlement in a State court of Illinois, sued out this writ of error. The Federal question, which makes the case, is stated in the opinion of the court.

*Mr. C. Stuart Beattie* for plaintiff in error. *Mr. Robert Hervey* was with him on the brief.

*Mr. George Hunt*, Attorney General of Illinois, and *Mr. P. S. Grosscup* for defendant in error. *Mr. Leonard Swett* was with them on the brief.

Mr. Justice Miller delivered the opinion of the court.

This case is brought here by a writ of error to the Supreme Court of the State of Illinois. The plaintiff in error, Frederick M. Ker, was indicted, tried, and convicted in the Criminal Court of Cook County, in that State, for larceny. The indictment also included charges of embezzlement. During the proceedings connected with the trial the defendant presented a plea in abatement, which, on demurrer, was overruled, and the defendant refusing to plead further, a plea of not guilty was entered for him, according to the statute of that State, by

order of the court, on which the trial and conviction took place.

The substance of the plea in abatement, which is a very long one, is, that the defendant, being in the city of Lima, in Peru, after the offences were charged to have been committed, was in fact kidnapped and brought to this country against his will. His statement is, that, application having been made by the parties who were injured, Governor Hamilton, of Illinois, made his requisition, in writing, to the Secretary of State of the United States, for a warrant requesting the extradition of the defendant, by the Executive of the Republic of Peru, from that country to Cook County; that, on the first day of March, 1883, the President of the United States issued his warrant, in due form, directed to Henry G. Julian, as messenger, to receive the defendant from the authorities of Peru, upon a charge of larceny, in compliance with the treaty between the United States and Peru on that subject; that the said Julian, having the necessary papers with him, arrived in Lima, but, without presenting them to any officer of the Peruvian government, or making any demand on that government for the surrender of Ker, forcibly and with violence arrested him, placed him on board the United States vessel Essex, in the harbor of Callao, kept him a close prisoner until the arrival of that vessel at Honolulu, where, after some detention, he was transferred in the same forcible manner on board another vessel, to wit, the City of Sydney, in which he was carried a prisoner to San Francisco, in the State of California. The plea then states, that, before his arrival in that city, Governor Hamilton had made a requisition on the Governor of California, under the laws and Constitution of the United States, for the delivery up of the defendant, as a fugitive from justice, who had escaped to that State on account of the same offences charged in the requisition on Peru and in the indictment in this case. The requisition arrived, as the plea states, and was presented to the Governor of California, who made his order for the surrender of the defendant to the person appointed by the Governor of Illinois, namely, one Frank Warner, on the 25th day of June, 1883. The defendant arrived in the city of San

Francisco on the 9th day of July thereafter, and was immediately placed in the custody of Warner, under the order of the Governor of California, and, still a prisoner, was transferred by him to Cook County, where the process of the Criminal Court was served upon him and he was held to answer the indictment already mentioned.

The plea is very full of averments that the defendant protested, and was refused any opportunity whatever, from the time of his arrest in Lima until he was delivered over to the authorities of Cook County, of communicating with any person or seeking any advice or assistance in regard to procuring his release by legal process or otherwise; and he alleges that this proceeding is a violation of the provisions of the treaty between the United States and Peru, negotiated in 1870, which was finally ratified by the two governments and proclaimed by the President of the United States, July 27, 1874. 18 Stat. 719.

The judgment of the Criminal Court of Cook County, Illinois, was carried by writ of error to the Supreme Court of that State, and there affirmed, to which judgment the present writ of error is directed. The assignments of error made here are as follows:

"First. That said Supreme Court of Illinois erred in affirming the judgment of said Criminal Court of Cook County, sustaining the demurrer to plaintiff in error's plea to the jurisdiction of said Criminal Court.

"Second. That said Supreme Court of Illinois erred in its judgment aforesaid, in failing to enforce the full faith and credit of the Federal treaty with the Republic of Peru, invoked by plaintiff in error in his said plea to the jurisdiction of said Criminal Court."

The grounds upon which the jurisdiction of this court is invoked may be said to be three, though from the briefs and arguments of counsel it is doubtful whether, in point of fact, more than one is relied upon. It is contended in several places in the brief that the proceedings in the arrest in Peru, and the extradition and delivery to the authorities of Cook County, were not "due process of law," and we may suppose, although

it is not so alleged, that this reference is to that clause of Article XIV of the Amendments to the Constitution of the United States which declares that no State shall deprive any person of life, liberty, or property "without due process of law." The "due process of law" here guaranteed is complied with when the party is regularly indicted by the proper grand jury in the State court, has a trial according to the forms and modes prescribed for such trials, and when, in that trial and proceedings, he is deprived of no rights to which he is lawfully entitled. We do not intend to say that there may not be proceedings previous to the trial, in regard to which the process could invoke in some manner the provisions of the clause of the Constitution, but, for more recognition is the manner in which he may be brought into the custody of the law, we do not think he is entitled to say that he should not be tried at all for the crime with which he is charged in a regular indictment. He may be arrested for a very serious offence by person without any warrant, or without any previous complaint, and brought before a proper officer, and this may be in some case said to be "without due process of law." But it would hardly be claimed, that after the case had been investigated and the defendant held by the proper authorities to answer for the crime, he could plead that he was first arrested "without due process of law." So here, when found within the jurisdiction of the State of Illinois and liable to answer for a crime against the laws of that State, unless there was some positive provision of the Constitution or of the laws of the country violated in bringing him into court, it is not easy to see how he can say that he is thus "without due process of law," within the meaning of the constitutional provision.

So, also, the objection is made that the proceedings between the authorities of the State of Illinois and those of the State of California were not in accordance with the act of Congress on that subject, and especially that, at the time the papers and warrants were issued from the governor of California and Illinois, the defendant was not within the State of California and was not there a fugitive from justice. This argument is not much pressed by counsel, and was scarcely noticed in the be-

preme Court of Illinois, but the effort here is to connect it as a part of the continued trespass and violation of law which accompanied the transfer from Peru to Illinois. It is sufficient to say, in regard to that part of this case, that when the governor of one State voluntarily surrenders a fugitive from the justice of another State to answer for his alleged offences, it is hardly a proper subject of inquiry on the trial of the case to examine into the details of the proceedings by which the demand was made by the one State and the manner in which it was responded to by the other. The case does not stand, when the party is in court and required to plead to an indictment, as it would have stood upon a writ of *habeas corpus* in California, or in any States through which he was carried in the progress of his extradition, to test the authority by which he was held; and we can see in the mere fact that the papers under which he was taken into custody in California were prepared and ready for him on his arrival from Peru, no sufficient reason for an abatement of the indictment against him in Cook County, or why he should be discharged from custody without a trial.

But the main proposition insisted on by counsel for plaintiff in error in this court is, that by virtue of the treaty of extradition with Peru the defendant acquired by his residence in that country a right of asylum, a right to be free from molestation for the crime committed in Illinois, a positive right in him that he should only be forcibly removed from Peru to the State of Illinois in accordance with the provisions of the treaty, and that this right is one which he can assert in the courts of the United States in all cases, whether the removal took place under proceedings sanctioned by the treaty, or under proceedings which were in total disregard of that treaty, amounting to an unlawful and unauthorized kidnapping.

This view of the subject is presented in various forms and repeated in various shapes, in the argument of counsel. The fact that this question was raised in the Supreme Court of Illinois may be said to confer jurisdiction on this court, because, in making this claim, the defendant asserted a right under a treaty of the United States, and, whether the assertion was

well founded or not, this court has jurisdiction to decide it; and we proceed to inquire into it.

There is no language in this treaty, or in any other treaty made by this country on the subject of extradition, of which we are aware; which says in terms that a party fleeing from the United States to escape punishment for crime becomes thereby entitled to an asylum in the country to which he has fled; indeed, the absurdity of such a proposition would at once prevent the making of a treaty of that kind. It will not be for a moment contended that the government of Peru could not have ordered Ker out of the country on his arrival, or at any period of his residence there. If this could be done, what becomes of his right of asylum?

Nor can it be doubted that the government of Peru could of its own accord, without any demand from the United States, have surrendered Ker to an agent of the State of Illinois, and that such surrender would have been valid within the dominions of Peru. It is idle, therefore, to claim that, either by express terms or by implication, there is given to a fugitive from justice in one of these countries any right to remain and reside in the other; and if the right of asylum means anything, it must mean this. The right of the government of Peru voluntarily to give a party in Ker's condition an asylum in that country, is quite a different thing from the right in him to demand and insist upon security in such an asylum. The treaty, so far as it regulates the right of asylum at all, is intended to limit this right in the case of one who is proved to be a criminal fleeing from justice, so that, on proper demand and proceedings had therein, the government of the country of the asylum shall deliver him up to the country where the crime was committed. And to this extent, and to this alone, the treaty does regulate or impose a restriction upon the right of the government of the country of the asylum to protect the criminal from removal therefrom.

In the case before us, the plea shows, that, although Julian went to Peru with the necessary papers to procure the extradition of Ker under the treaty, those papers remained in his pocket and were never brought to light in Peru; that no steps

were taken under them; and that Julian, in seizing upon the person of Ker and carrying him out of the territory of Peru into the United States, did not act nor profess to act under the treaty. In fact, that treaty was not called into operation, was not relied upon, was not made the pretext of arrest, and the facts show that it was a clear case of kidnapping within the dominions of Peru, without any pretence of authority under the treaty or from the government of the United States.

In the case of *United States* v. *Rauscher*, just decided, *ante*, 407, and considered with this, the effect of extradition proceedings under a treaty was very fully considered, and it was there held, that, when a party was duly surrendered, by proper proceedings, under the treaty of 1842 with Great Britain, he came to this country clothed with the protection which the nature of such proceedings and the true construction of the treaty gave him. One of the rights with which he was thus clothed, both in regard to himself and in good faith to the country which had sent him here, was, that he should be tried for no other offence than the one for which he was delivered under the extradition proceedings. If Ker had been brought to this country by proceedings under the treaty of 1870–74 with Peru, it seems probable, from the statement of the case in the record, that he might have successfully pleaded that he was extradited for larceny, and convicted by the verdict of a jury of embezzlement; for the statement in the plea is, that the demand made by the President of the United States, if it had been put in operation, was for an extradition for larceny, although some forms of embezzlement are mentioned in the treaty as subjects of extradition. But it is quite a different case when the plaintiff in error comes to this country in the manner in which he was brought here, clothed with no rights which a proceeding under the treaty could have given him, and no duty which this country owes to Peru or to him under the treaty.

We think it very clear, therefore, that, in invoking the jurisdiction of this court upon the ground that the prisoner was denied a right conferred upon him by a treaty of the United States, he has failed to establish the existence of any such right.

The question of how far his forcible seizure in another country, and transfer by violence, force, or fraud, to this country, could be made available to resist trial in the State court, for the offence now charged upon him, is one which we do not feel called upon to decide, for in that transaction we do not see that the Constitution, or laws, or treaties, of the United States guarantee him any protection. There are authorities of the highest respectability which hold that such forcible abduction is no sufficient reason why the party should not answer when brought within the jurisdiction of the court which has the right to try him for such an offence, and presents no valid objection to his trial in such court. Among the authorities which support the proposition are the following: *Ex parte Scott*, 9 B. & C. 446 (1829); *Lopez & Sattler's Case*, 1 Dearsly & Bell's Crown Cases, 525; *State* v. *Smith*, 1 Bailey, So. Car., Law, 283 (1829); *S. C.* 19 Am. Dec. 679; *State* v. *Brewster*, 7 Vt. 118 (1835); *Dow's Case*, 18 Penn. St. 37 (1851); *State* v. *Ross and Mann*, 21 Iowa, 467 (1866); *Ship Richmond* v. *United States*, (*The Richmond*,) 9 Cranch, 102.

However this may be, the decision of that question is as much within the province of the State court, as a question of common law, or of the law of nations, of which that court is bound to take notice, as it is of the courts of the United States. And though we might or might not differ with the Illinois court on that subject, it is one in which we have no right to review their decision.

It must be remembered that this view of the subject does not leave the prisoner or the government of Peru without remedy for his unauthorized seizure within its territory. Even this treaty with that country provides for the extradition of persons charged with kidnapping, and on demand from Peru, Julian, the party who is guilty of it, could be surrendered and tried in its courts for this violation of its laws. The party himself would probably not be without redress, for he could sue Julian in an action of trespass and false imprisonment, and the facts set out in the plea would without doubt sustain the action. Whether he could recover a sum sufficient to justify the action would probably depend upon moral aspects of the case, which we cannot here consider.

We must, therefore, hold that, so far as any question in which this court can revise the judgment of the Supreme Court of the State of Illinois is presented to us, the judgment must be

*Affirmed.*

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# FRISBIE, WARDEN, *v.* COLLINS.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

No. 331. Argued January 28, 1952.—Decided March 10, 1952.

1. That a person was forcibly abducted and taken from one state to another to be tried for a crime does not invalidate his conviction in a court of the latter state under the Due Process Clause of the Fourteenth Amendment. *Ker* v. *Illinois*, 119 U. S. 436. P. 522.
2. A different result is not required by the Federal Kidnaping Act, even if the abduction was a violation of that Act. Pp. 522–523.
3. There being sound arguments to support the conclusion of the Court of Appeals in this case that there were "special circumstances" which required prompt federal intervention, that conclusion is accepted by this Court without deciding whether state remedies had been exhausted before relief from state imprisonment was sought in a federal court. Pp. 520–522.

189 F. 2d 464, reversed.

The district court denied respondent's petition for a writ of habeas corpus. The Court of Appeals reversed. 189 F. 2d 464. This Court granted certiorari. 342 U. S. 865. *Reversed*, p. 523.

*Edmund E. Shepherd*, Solicitor General of Michigan, argued the cause for petitioner. With him on the brief were *Frank G. Millard*, Attorney General, and *Daniel J. O'Hara*, Assistant Attorney General.

*A. Stewart Kerr*, acting under appointment by the Court, argued the cause and filed a brief for respondent.

MR. JUSTICE BLACK delivered the opinion of the Court.

Acting as his own lawyer,[1] the respondent Shirley Collins brought this habeas corpus case in a United States

[1] We appointed counsel to represent respondent in this Court. 342 U. S. 892.

District Court seeking release from a Michigan state prison where he is serving a life sentence for murder. His petition alleges that while he was living in Chicago, Michigan officers forcibly seized, handcuffed, blackjacked and took him to Michigan. He claims that trial and conviction under such circumstances is in violation of the Due Process Clause of the Fourteenth Amendment and the Federal Kidnaping Act,[2] and that therefore his conviction is a nullity.

The District Court denied the writ without a hearing on the ground that the state court had power to try respondent "regardless of how presence was procured." The Court of Appeals, one judge dissenting, reversed and remanded the cause for hearing. 189 F. 2d 464. It held that the Federal Kidnaping Act had changed the rule declared in prior holdings of this Court, that a state could constitutionally try and convict a defendant after acquiring jurisdiction by force.[3] To review this important question we granted certiorari. 342 U. S. 865.

We must first dispose of the state's contention that the District Court should have denied relief on the ground that respondent had an available state remedy. This argument of the state is a little cloudy, apparently because of the state attorney general's doubt that any state procedure used could possibly lead to the granting of relief. There is no doubt that as a general rule federal courts should deny the writ to state prisoners if there is "available State corrective process." 62 Stat. 967, 28 U. S. C. § 2254.[4] As explained in *Darr* v. *Burford*, 339

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[2] 47 Stat. 326, as amended, 18 U. S. C. § 1201.

[3] *Ker* v. *Illinois*, 119 U. S. 436; *Mahon* v. *Justice*, 127 U. S. 700. See also *Lascelles* v. *Georgia*, 148 U. S. 537; *In re Johnson*, 167 U. S. 120.

[4] "An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the rem-

U. S. 200, 210, this general rule is not rigid and inflexible; district courts may deviate from it and grant relief in special circumstances. Whether such circumstances exist calls for a factual appraisal by the court in each special situation. Determination of this issue, like others, is largely left to the trial courts subject to appropriate review by the courts of appeals.

The trial court, pointing out that the Michigan Supreme Court had previously denied relief, apparently assumed that no further state corrective process was available [5] and decided against respondent on the merits. Failure to discuss the availability of state relief may have been due to the fact that the state did not raise the question; indeed the record shows no appearance of the state.[6] The Court of Appeals did expressly consider the question of exhaustion of state remedies. It found the existence of

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edies available in the courts of the State, or that there is either an absence of available State corrective process *or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.* [Emphasis added.]

"An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented."

[5] The Court said, "Petitioner originally filed a petition for a writ of habeas corpus in the Supreme Court of the State of Michigan which was denied on June 22, 1949. He then filed a petition for a writ in this District, on the ground that the complaint in the state court action was defective and that a faulty warrant was issued for his arrest, claiming further that he was kidnapped by Michigan Police authorities in Chicago, Illinois, and brought to Michigan for trial. This petition was also denied."

[6] So far as the record shows, the state's first objection to federal court consideration of this case was made after the Court of Appeals decided in respondent's favor. A motion for rehearing then filed alleged that respondent had made several futile efforts to have his conviction reviewed. The motion also denied that the particular ground here relied on had previously been raised.

"special circumstances" which required prompt federal intervention "in this case." It would serve no useful purpose to review those special circumstances in detail. They are peculiar to this case, may never come up again, and a discussion of them could not give precision to the "special circumstances" rule. It is sufficient to say that there are sound arguments to support the Court of Appeals' conclusion that prompt decision of the issues raised was desirable. We accept its findings in this respect.

This Court has never departed from the rule announced in *Ker* v. *Illinois*, 119 U. S. 436, 444, that the power of a court to try a person for crime is not impaired by the fact that he had been brought within the court's jurisdiction by reason of a "forcible abduction."[7] No persuasive reasons are now presented to justify overruling this line of cases. They rest on the sound basis that due process of law is satisfied when one present in court is convicted of crime after having been fairly apprized of the charges against him and after a fair trial in accordance with constitutional procedural safeguards. There is nothing in the Constitution that requires a court to permit a guilty person rightfully convicted to escape justice because he was brought to trial against his will.

Despite our prior decisions, the Court of Appeals, relying on the Federal Kidnaping Act, held that respondent was entitled to the writ if he could prove the facts he alleged. The Court thought that to hold otherwise after the passage of the Kidnaping Act "would in practical effect lend encouragement to the commission of criminal acts by those sworn to enforce the law." In considering whether the law of our prior cases has been changed by the Federal Kidnaping Act, we assume, without intimating that it is so, that the Michigan officers would have violated it if the facts are as alleged. This Act prescribes

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[7] See cases cited, *supra*, n. 2.

in some detail the severe sanctions Congress wanted it to have. Persons who have violated it can be imprisoned for a term of years or for life; under some circumstances violators can be given the death sentence. We think the Act cannot fairly be construed so as to add to the list of sanctions detailed a sanction barring a state from prosecuting persons wrongfully brought to it by its officers. It may be that Congress could add such a sanction.[8] We cannot.

The judgment of the Court of Appeals is reversed and that of the District Court is affirmed.

*It is so ordered.*

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[8] Cf. *Mahon* v. *Justice*, *supra*, n. 3, 705.

Senator DENTON. One question, Senator Specter. In S. 1372, you refer to "a U.S. citizen," and in S. 1429, you refer to "a national of the United States." Were you consciously making those distinctions, and would you not prefer the use of the term, "a U.S. person," which includes permanent resident aliens?

Senator SPECTER. Mr. Chairman, I think that would be a good substitution.

Senator DENTON. Senator Specter, the value that you lend to this hearing certainly calls for an invitation to you to join us here for the rest of the hearing. Indeed, if you have the time, when we have to depart, I hope you will accept our invitation to chair the hearing.

Senator SPECTER. Well, thank you very much, Senator Denton. I have another commitment. I will return as soon as I finish, to join you and participate. I appreciate it very much.

Senator DENTON. What time do you think you will come back?

Senator SPECTER. I will be back in about 15 minutes.

Senator DENTON. Thank you very much.

Senator SPECTER. Thank you.

Senator DENTON. Our next witness is the Honorable Abraham D. Sofaer, legal adviser for the Department of State. As a former U.S. district judge for the Southern District of New York, Judge Sofaer possesses the unique ability to analyze the complex legal issues involved in international terrorism, and we welcome him to today's hearing.

Your complete written statement, Judge, will be included in the record, and if you can summarize your testimony within 10 minutes, we would appreciate it.

## STATEMENT OF HON. ABRAHAM D. SOFAER, LEGAL ADVISER, U.S. DEPARTMENT OF STATE

Mr. SOFAER. Thank you, Mr. Chairman.

I congratulate you and the members here of the committee for having this hearing, and I particularly recognize and appreciate the vigor and imagination that Senator Specter brings to these issues. His influence is already profound. He had a national reputation for law enforcement before he came to the Senate, and I think that his statements and his initiatives have already demonstrated that he is an invaluable asset to the Senate and to us all in our fight against international terrorism.

We may have some differences, but I want to say at the outset that I value his efforts and his initiatives, because they stem from the kind of impatience and concern that we all share about these issues.

I will be very brief, and I trust that you will read the detailed comments that I have submitted. I worked hard on this testimony, because I care about this bill, and I would like to see aspects of it adopted as law.

In particular, the bill fills a remaining gap in our current structure of criminal jurisdiction over acts of terrorism by making criminal violent acts committed against U.S. nationals. I agree with you, "U.S. persons" would be the right formulation. And I have assumed, along with the committee staff and after discussions

with them, that section 1373 would be subsumed into section 1429, and I have addressed my testimony to section 1429.

I think that the proposed extension of our jurisdiction is a lawful one under international law and makes sense under domestic law, so I support it, and I have given you my reasons for that.

I also think at this stage, at least, that the bill's limitation to violent acts that are acts of international terrorism is a good one, and at this point, at least, I would support that as well.

The Justice Department may feel, though, that that limitation raises evidentiary problems that it wants to avoid, and you ought to consult with them and think that issue through.

Now, Senator Specter has repeatedly referred in his testimony to the notion of self-help. I want to emphasize that I do not read this bill as granting any authority for self-help in the enforcement of its provisions. I read this bill as extending our jurisdiction, and that, therefore, whatever appropriate measures should be taken in the exercise of that jurisdiction should in fact be taken.

In general, I would say that seizure by U.S. officials of terrorist suspects abroad might constitute a serious breach of the territorial sovereignty of a foreign state, and could violate local kidnaping laws—that is, the people who do the seizing could be, in fact, criminals under local law. Such acts might also be viewed by foreign states as violations of international law and incompatible with the bilateral extradition treaties that we have in force with those nations.

I want to be colloquial with you in this, Senator Denton, and ask you to stop and think about the implications of using self-help as a regular routine. There may be exceptional cases in which we do have to resort to those kinds of techniques, but Senator Specter mentioned that this is no different than an arrest in Philadelphia. I would remind you that certain law enforcement actions taken in Philadelphia can cause great concern and controversy within a city, within a State, within a nation. Now, you must put that together with the fact that it is not just Lebanon that might fail to extradite a terrorist. Which are the countries that fail to extradite terrorists in this world?

Let's start with France. Can you imagine us going into Paris and seizing some person we regard as a terrorist, in violation of French law—or into Switzerland—or in the territory of other allies that have occasionally invoked various exceptions to the extradition treaties that we have? This is a very sensitive issue.

I want to also add—and I think this is an important underlying comment I have to this bill and this committee—that we, the United States of America, are one of those nations who fail to extradite terrorists.

Now, the first question that that raises for me with you is, how would we feel if some foreign nation—let us take the United Kingdom—came over here and seized some terrorist suspect in New York City, or Boston, or Philadelphia, or Kentucky, or Utah, or someplace else, because we refused through the normal channels of international, legal communications, to extradite that individual?

The committee must also keep in mind our stature and our position vis-a-vis the rest of the world. While we are considering measures of self-help of this kind—I do not regard this measure as one

of self-help—but while we are discussing issues of self-help, we are at the same time considering a United States United Kingdom treaty that would in fact overturn some of the decisions in which the United States has refused to extradite murderers to the United Kingdom.

I think, Senator Denton, Mr. Chairman, that we really need to think about our own consistency vis-a-vis the world here. If we are going to go out, and you want us to go out and be tough in the world, and I agree with that, I cannot face the world, however, and Ambassador Oakley, who is in charge of terrorism in the State Department, cannot face our allies in the world and ask them to turn terrorists over to us and tell them that, occasionally, we may have to come in and grab some people, if we at the same time are invoking all kinds of arcane notions to deny extradition of terrorists to those same foreign nations. I think you understand my point.

Senator Denton. I certainly do, Judge.

I am very aware that one facet of American characteristic that can be nationally identified is that we all have, unconscious of terrorism for decades, while others are subjected to it. We cannot overreact in terms of trying to do something tough and, as you say, generalize from something like the Barbary pirates in their own country of Tripoli, which is a good example of precedent with respect to American toughness, when the other nations were cowered by those pirates. But that was in their own country. We cannot go in and, by our own legislative initiatives, preempt the legislation existing in other countries. And that is why you are testifying today, and I think we intend to be extremely careful in that respect.

Mr. Sofaer. That point about the Barbary pirates leads me to one of my few remaining observations, and that is the point that you made, which I think is so important, that terrorism is the most widely used form of warfare in the world today. Those were your words, I think.

The Barbary pirates, if you remember, was a war. It was not a declared war, but the government in Tripoli cut our flag down in the Embassy compound, and that was an act of war in those days. I think it should be an act of war today as well. We regarded it that way, then, and we went to war with them. We sent a fleet out. It was authorized by the President. And we took on their fleet.

All those events were acts of war and foreign diplomacy. And that brings me to the jurisdictional provision of this bill. This bill, I think, too broadly treats the enforcement mechanism as being limited to a normal, regular law enforcement technique. It gives the Attorney General jurisdiction, and it should—the Attorney General is our chief law enforcement officer—but it says, indeed both the bills do, that he has the capacity and the authority to call upon all the other agencies of the Government, including the Army, Navy, Air Force and Marines, presumably, and the State Department, and that they shall—and it uses the word "shall"—give him whatever support he asks for.

It seems to me, Senator, that the issue of terrorism and what we do about terrorism is a very sensitive one overseas. It has got diplomatic implications, it has intelligence implications. And the way we have been doing this within the executive branch is through an

ordinated intelligence activity under the general leadership of the Vice President and the NSC. We have under consideration right now the question how to reorganize the executive branch to deal with terrorism.

My basic point is that this bill should not mandate a particular form of internal organization within the executive branch. Wait until Admiral Holloway concludes his study of this subject and makes his recommendations to the President, and the NSC studies and the President decides what should be done.

Senator DECONCINI. Judge, if I may, would you care to -- assuming I totally agree with that kind of approach, and nobody has been the keep of principle on this department from Admiral Holloway and I will be meeting tomorrow I, too, believe that my approach should be institutional, fundamental, and not overly specific, but I do understand the role of Congress and where it appropriate, and we must consider their legislation. But I am sure we are in agreement that that legislation will be framed before I get to the floor insofar as possible so as to represent sound legislation by international practice as well as national needs.

Mr. SMEDLEY. Well, in light of that exercise and cross-cutting comments to the points I have been trying to make here, Senator, primarily the principal ones, I am going to let what I said stand. Everyone had learned to do what this original letter was having to years to do hands-on drug which I am afraid.

Thank you very much.

[The following statement was submitted for the record:]

PREPARED STATEMENT OF ABRAHAM D. SOFAER

Mr. Chairman and members of the committee, it is a privilege to be invited to testify before you today on S. 1429, the "Terrorist Prosecution Act of 1985", introduced by Senator Specter. We in the Executive Branch who are involved in the fight against international terrorism have for some time recognized and appreciated the vigor and imagination that Senator Specter has brought to the search for new legal means to bolster our anti-terrorism capabilities. While we have differed on the wisdom and utility of certain specific proposals that have been advanced in this area, we share his and your commitment to look for all possible legal means to counter the menace of terrorism.

As Senator Specter noted in his remarks introducing the measure we are discussing today, the last Congress saw some notable achievements in the construction of new legal tools to deal with international terrorism. The establishment of U.S. criminal jurisdiction over aircraft sabotage and hostage-taking and authority to issue rewards will prove helpful in our fight against terrorism.

The subject of today's session is S. 1429. This proposal is in part aimed at filling a remaining gap in our current structure of criminal jurisdiction over acts of terrorism committed against Americans abroad. It would make criminal under United States federal law violent attacks committed against United States nationals when those acts qualify as "acts of international terrorism," as defined in 50 U.S.C. §1801(c). It would impose on persons convicted of carrying out such attacks the existing severe federal penalties for offenses such as murder, assault, or kidnapping.

We believe that this proposed extension of jurisdiction is both warranted by reality and logic, and consistent with international law. On the question of the substantive utility of this proposal it should be sufficient to remember the murder, on June 19, of six U.S. citizens -- four Marine embassy guards and two civilian contractors. They and several Salvadoran citizens were shot down in cold blood by terrorists with automatic weapons as they sat at a sidewalk cafe in San Salvador. The murders of the four Marines are crimes under U.S. law (18 U.S.C. 1116), since the Marines, as embassy guards, were internationally protected persons. The murders of the two American civilians are not presently U.S. crimes. Had the two civilians, on the other hand, been taken hostage instead of murdered outright, the act would have been a federal crime under the Act for the Prevention and Punishment of the Crime of Hostage-Taking (codified at 18 U.S.C. 1203), which was passed in the last Congress in large part due, I might add, to the work of this subcommittee. There is no compelling reason why the seizure of a private U.S. citizen abroad as a hostage should be a U.S. federal crime but the terrorist murder of that same U.S. citizen should not. This incident alone serves to highlight the real need for a measure of the type Senator Specter has introduced.

In his introductory remarks Senator Specter referred to the well-known international legal principle of protective jurisidiction, whereby a state is entitled to exercise criminal jurisidiction over acts occuring outside its territory if such acts have a potential adverse effect upon its security or the operation of its governmental functions. We agree that international law supports an extension of criminal jurisidiction to the type of offenses covered by this legislation. Acts of international terrorism by definition are aimed at affecting by coercion and extortion the policies and

practices of a Government. While the United States Government is not the only government that has been targetted by terrorists, it is clear that terrorists are turning now more frequently to violence against our citizens abroad as a means of attempting to influence U.S. policy. We cannot allow them to succeed, and the contribution that this bill can make in our struggle to bring these criminals to justice is most welcome.

In that regard, I note that the bill is limited to violent attacks carried out "in an act of international terrorism." Such a limitation restricts the bill's scope to the problem that the bill seeks to address. It is also supported by practical considerations. Even though some States may extend their criminal jurisidiction generally to serious crimes against their nationals abroad, any such extension should be implemented cautiously. Local authorities bear the primary reponsibility for law enforcement within their territory, and in the case of most crimes against Americans abroad there is ordinarily no reason for us to consider asserting our criminal jurisdiction extraterritorially. As Senator Specter noted, we want to focus our efforts on international terrorism, not "barroom brawls."

We would not be surprised if the Department of Justice had concerns about making it an element of the offense that the deed in question have been done "in an act of international terrorism." This requirement could raise evidentiary and constitutional problems that could unduly complicate prosecutions under this legislation. While the Department of State is comfortable with the bill in this respect as drafted, we believe that investigatory and prosecutorial concerns deserve careful attention from the Committee, and we may in the future develop with Justice a joint position on this issue.

Senator Specter also noted, in his remarks introducing S. 1429, that we must be willing to exercise our lawful right to apprehend criminals abroad and bring them back to the U.S. for trial. I was glad to see that the bill does not provide for any "self-help" measures. The Due Process clause of the Constitution does not automatically preclude U.S. courts from trying persons forcibly seized abroad by U.S. authorities. It would be wrong, however, to extrapolate from this the conclusion that such seizures themselves are perfectly lawful. Indeed, the burden of Justice Black's opinion in Frisbie v. Collins, 342 U.S. 519 (1952), was that the trial of a person seized abroad may be legal notwithstanding the possibly illegal nature of the seizure. This is not the occasion to address in detail the legality or necessity of seizing persons abraod, or of other techniques that might be used to get them physically within our territory. In general, seizure by U.S. officials of terrorist suspects abroad might constitute a serious breach of the territorial sovereignty of the foreign State, could violate local kidnapping laws, and might well be viewed by the foreign State as a violation of international law and as incompatible with any bilateral extradition treaty in force. Yet, self help is sometimes necessary in various areas of public and private law, ande this area is no exception. In light of the fact that the bill itself contains no self-help provision, I will leave to a more appropriate occasion a further treatment of this question, which in any event should proceed only after close consultation with the Department of Justice and other interested agencies.

The shortcomings of self-help measures do, however, highlight a more fundamental point: that the nature of international terrorism requires us to rely on international cooperation and diplomacy to bring international terrorists to justice. In part this reflects a basic fact about international crime --

that it is often by its nature activity the control of which requires coordinated, transnational communications, investigation and cooperation. Viewed against this background, it becomes clear that making an activity a crime under U.S. law is an indispensable first step, although not a complete response, to international criminality. Because unilateral U.S. actions to bring international suspects to justice can be ineffective and are fraught with legal difficulties, we must normally proceed along established international channels which rely on extradition and other forms of international cooperation.

In addition, we must recognize that international activities such as terrorism, narcotics trafficking, and other types of serious criminal conduct that crosses international boundaries, have important and inescapable foreign policy implications. When legal actions are taken in these areas, foreign policy concerns will often influence the proper result. Moreover, we have witnessed terrorism that is either sponsored or condoned by foreign nations, among which are some determined enemies of the U.S. This makes the subject of grave importance to the Secretary of State in dealing with the nations involved. The goals and objectives of international terrorists are political, and even strategic, and an effective response to their activities requires an awareness of all relevant international political circumstances.

Because of these inescapable facts of international life, international law enforcement must be recognized to be in part an element of foreign policy and international diplomacy. To see it instead strictly as a matter of routine law enforcement to be handled in the same manner as domestic law enforcement would be a grave mistake, with grave implications for the effective conduct of foreign affairs. This is why the present

Administration has approached international terrorism as a subject in which several agencies have important contributions to make, and why the National Security Council and Vice President Bush in particular have taken the lead in coordinating international antiterrorist activities. A study is presently under way within the Executive Branch on how most effectively to organize against international terrorism.

In this connection, I would note that the bill, unlike prior enactments in the area, appears to mandate a particular allocation of responsibility for international law enforcement within the Executive Branch. Subsection 2321(e) in section 2(a) of the bill would appear to authorize the Attorney General, in effect, to command the resources of all Federal, State and local agencies, including the armed forces of the United States. S. 1429 also differs from 18 U.S.C. 1116 (criminalizing murder and manslaughter of foreign officials, official guests, or internationally protected persons) and similar provisions elsewhere in the Code, which provide only that the Attorney General may request assistance from other agencies, leaving it to them to respond in accordance with their respective judgments.

I do not wish to dwell on the precise linguistic formulations previously adopted, since the the more fundamental question concerns how the U.S. Government should coordinate its response to international terrorism and who should participate in making that determination. Ultimately, the President must decide how best to direct U.S. agencies, in particular the armed forces, to carry out international law enforcement activities relating to acts that occur abroad, that sometimes involve foreign states, and that always raise diplomatic, strategic, military and political considerations. A statute mandating a particular allocation of functions within the

Executive Branch would hinder our ability to respond in the most effective and appropriate manner to the international terrorist threat.

Before concluding, I would like to point to a concrete example of the type of international cooperation that is essential to effective international law enforcement. On July 17 the President transmitted to the Senate the recently signed Supplementary Treaty Concerning the Extradition Treaty Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland. I am scheduled to testify specifically on this new treaty before the Foreign Relations Committee later this week, so I will not spend much time on it here. That treaty represents, for the United States, an imperative step to maintain our credibility in the search for effective means of ensuring that terrorists cannot escape justice by fleeing from one country to another and claiming that their criminal acts were political in nature. Our own federal courts have, in several recent cases, refused to extradite accused or convicted terrorists who are members of the Provisional IRA. Most recently, the extradition to the United Kingdom of Joseph Patrick Doherty was refused by a Federal district judge on the ground that Doherty's murder of a British Army Captain and his violent escape from a Belfast prison where he was awaiting sentencing for that murder were political offenses. This is an intolerable situation, which we hope and expect will be remedied by the new U.S.-U.K. Supplemental Treaty. That is an effort to which you should give your full support. Indeed, we cannot reasonably or credibly advance positions such as those in the proposed legislation before this Committee, and at the same time refuse to cooperate with our allies who seek our help through proper channels in bringing terrorists to justice.

There are a few technical points I would like to make regarding the text of the bill. I note that subsection (b), referring to assaults and other violent attacks, contains the specific jurisdictional limitation "in any foreign country or in international waters or airspace," while subsection (a), referring to killing or attempted killing, does not. Subsection (a) therefore would, in contrast to subsection (b), apply domestically as well as abroad. While I leave the legal policy aspects of such domestic application for Justice Department comment, I would say only that the reason for this distinction in the current text of the bill is unclear. Further, subsection (b) refers to violent attacks on the "offical premises, private accomodation, or means of transport" of a victim. As regards foreign officials, official guests, and internationally protected persons, such acts are already criminal under 18 U.S.C. 112(a). As regards others, i.e. private citizens, we would question whether such a provision, which derives ultimately from the international legal protections for diplomats codified in the Vienna Convention on Diplomatic Relations, is necessary or appropriate. Finally, subsection (d), which contains the phrase "irrespective of the nationality of the victim", appears unnecessary in light of the bill's coverage of U.S. nationals only.

Finally, I must note that the Department of Justice has not yet been invited to testify on this bill. Of course, I would expect that Justice's views would be sought before the legislation continues through the committee process.

In conclusion, it is a pleasure to be able to support the speedy passage of S. 1429, with the changes I have suggested.

I am ready to answer any questions you may have.

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Senator DENTON. Thank you, Judge.

Mr. SOFAER. If you have any questions, I would be happy to answer them.

Senator DENTON. Yes, we do. We do have under consideration an omnibus antiterrorism bill, which will be introduced after the recess. And in developing this legislation, the question has arisen on the issue of ransom payments.

Ambassador Oakley testified—and he will be testifying again today—at one point in the joint hearings on May 15, that it is the policy of the U.S. Government not to pay ransoms. My question to you, sir—and I would be grateful to have Ambassador Oakley's comments, as well—should the Congress go so far as to enact legislation which criminalizes the payment of ransom or the negotiation for the payment of ransom by individuals and corporations, as has been done in Singapore?

I ask that just for the record, principally. I would note that there was a major drop in kidnapings and ransom demands in Singapore after the law's enactment, and there are other countries moving in that direction, such as Argentina, Venezuela, Colombia, and Italy.

If you think that we should move in that direction, but have distinctions that you would care to make, it would help us as we proceed in the development of the omnibus bill—if you care to distinguish between U.S.-controlled multinational corporations, the Government itself, anything you could offer constructively at this time would be of assistance to us.

Mr. SOFAER. Well, first of all, I would want to distinguish between a ransom and a reward and make it clear, whatever you do, that you do not want to prevent private groups from joining the Government in giving awards for the arrest and prosecution of terrorists. I gather you agree with that.

With respect to the payment of ransoms, it is a new thought for me, and I would like an opportunity to study it. I will be happy to get back to you in writing and even insert within the record, if you wish, our answers to that.

Senator DENTON. That would be fine. The amended International Trafficking in Arms regulations, which was referred to earlier, purport to cover the providing of any training, logistical, mechanical, maintenance or technical services to the armed forces or intelligence services of a foreign entity. As you may know, this is one problem which we attempted to deal with through the introduction of S. 2626 last year, and we sort of went back to "go" on that legislation. How, in your view, would the amendments to the ITAR regulations cover training of foreign nationals in domestic mercenary camps?

Mr. SOFAER. Well, I would not know. I would have to sit down and study that. I think that, just as I said earlier, we are going in different directions on terrorism measures, with respect to the United States-United Kingdom treaty and our own extradition rules and what we want to do here in this committee. We may be going in different directions in some other areas, as well.

I think that the Senate has to come to grips—indeed, the Nation has to come to grips—with the reality of international terrorism and its state sponsorship. And the Senate and the Congress have to come to grips with the fact that you are going to have to give the

President and the Secretary of State and the military and the CIA—they are our CIA, it is the U.S. CIA; that is sometimes forgotten in the Congress of the United States—the capacity to deal with intelligence training, and with military actions taken against our allies. If we are going to be deprived of the capacity to do something about those underlying causes that you have put your finger on, we are ultimately not going to be able to deal with this problem.

These laws are fine, they are excellent. I support this kind of extension of jurisdiction. But ultimately, this is as you have said a war. As President Reagan said, this is the modern form of warfare. This is a way for them to attack us and our people without declaring war on us, purportedly, therefore, immunizing themselves somewhat from the kinds of military actions we normally associate with war.

Congress has to realize that and has to be more flexible with the executive branch vis-a-vis actions short of war. And intelligence and these other things that you are talking about are the sorts of issues that we have to address and be more consistent about in terms of what we want to achieve.

Senator DENTON. Well, for what it is worth in the contribution to perspective, I generally agree with your characterization of the situation, and I would offer my own view that prior to the Geneva Convention, the Hague Convention, the League of Nations, the United Nations, aggressive activity against nations by other nations or groups was usually an overt act, involving warfare. Increasingly, as the web of inhibitions against overt aggression were sown through those events that I mentioned, those organizations and efforts on the part of mankind, humankind, the community of nations, we squeezed out to a degree the overt act of aggression, and in Korea, we had a somewhat subdued and disguised version; in Vietnam, an even more nuanced and hidden and intentionally ambiguous move, in which terrorism in the sense that we are using it was employed by the North Vietnamese against the South Vietnamese. We never did fully cope with that, nor did we handle the general situation over there well at all, principally because we have not understood the biology of terrorism, intimidation, if you will, which is now down at a level at which you have government by intimidation—you have the block system in Nicaragua, in Havana, in Moscow—that kind of experiential policy development, organizational development, that the Marxists are good at has taken root in international forces and trends adopted by other nations which are not necessarily Marxist at all and supported by Moscow, because terrorism does not affect adversely dictatorial governments; it affects democracy generally across the world. And we are in a very early learning stage in this country about the situation. I agree with the need to proceed cautiously, comprehensively, and basically, because we have a problem with identification of that which we are talking about—terrorism with a capital "T," terrorism with a small "t," if you will.

So I am in no rush, Judge, and I am very much in agreement with the context of your remarks, and thank you very much for them this morning. We shall work closely with you.

Incidentally, I want to mention that this domestic mercenary training is a rather widespread situation in the United States and one which we are trying to address to develop an understanding of to see if there is any legislation needed. We do not have any prejudices in that respect to begin from, but my staff director, Joel Lisker, here on my right, with not inconsiderable experience in the field required, will be visiting one of those camps in my own State, starting tomorrow.

Thank you again for your testimony.

Mr. SOFAER. Thank you, Senator.

Senator DENTON. We shall be working closely with you, sir.

Mr. SOFAER. I look forward to it.

[The following information was subsequently submitted for the record:]

SUPPLEMENTARY ANSWER OF STATE DEPARTMENT LEGAL ADVISER ABRAHAM D. SOFAER TO QUESTION OF SENATOR DENTON

*Question.* Should Congress enact legislation to criminalize payment of ransom in hostage-taking situations by private U.S. persons?

Answer. Activities by U.S. private persons in hostage-taking situations which undermine the policy of the U.S. Government that no concessions should be made to terrorism are a matter of serious concern to us. We are consulting closely with the Department of Justice to determine the most appropriate and effective means of dealing with such activities. New legislation to criminalize such activities is one option under close review. We welcome the Senator's interest in this matter and look forward to a continued exchange of views on it.

Senator DENTON. We invite our next witness, the Honorable Robert B. Oakley, to come forward. He is the Director of the Office for Counterterrorism and Emergency Planning at the Department of State. Ambassador Oakley is a leading expert on the subject of international terrorism and, at the recent Judiciary and Foreign Relations joint hearings, he presented a very detailed analysis of the current trends in terrorism and this country's ability to respond adequately to the threat.

Ambassador Oakley's testimony was helpful and enlightening at that time, and we anticipate the same today.

I have just received word from a man who means what he says, Senator Thurmond, that I must come to the Judiciary Executive Committee meeting; they are lacking a quorum. So, after welcoming you today, Ambassador Oakley, I must turn the hearing over to Mr. Lisker temporarily, until the return of Senator Specter or myself.

Your entire written statement will be placed in the record, and if you could summarize it in 10 minutes, Mr. Ambassador, orally, we would appreciate that.

Thank you.

Mr. LISKER. Ambassador Oakley, would you like to begin?

## STATEMENT OF HON. ROBERT B. OAKLEY, DIRECTOR, OFFICE FOR COUNTERTERRORISM AND EMERGENCY PLANNING, U.S. DEPARTMENT OF STATE, WASHINGTON, DC

Mr. OAKLEY. Mr. Chairman, thank you for the opportunity to testify here today along with Judge Sofaer on behalf of the State Department in order to discuss our continued joint efforts to counter international terrorism.

The contribution that this committee has made—Senator Denton and Senator Specter, in particular—is very substantial and greatly appreciated.

The initiatives, the hearings, the studies which have been undertaken by this committee have contributed a great deal to the understanding on the part of Congress and public opinion, and also on the part of the executive branch, of the real nature of the threat.

The fact that we have been able to share informally and formally our reactions to your ideas, and to bring our ideas to you, members of this committee, and get your reactions, has been very, very helpful to both branches and to the overall effort of combating international terrorism.

We appreciate that, and we look forward to continuing this very good working relationship.

I will not attempt to duplicate Judge Sofaer's excellent discussion of the details of the legislation which has been proposed, nor can I come close to matching his background in dealing with such legislation, given his record and his experience as a prosecutor and as a judge. And as you have heard, he is also an eloquent orator. We are delighted to have him with us as a member of the State Department team.

Let me offer three thoughts very quickly, primarily related to the foreign policy and diplomatic aspects of our antiterrorism effort, in which we find this bill to be helpful.

It is a useful component in our effort to obtain extradition of persons we seek to bring to trial or to persuade another government to prosecute. It emphasizes the view of the United States that criminal acts by terrorists, particularly murder and attempted murder, and bombings, are crimes which require punishment. This is a very important principle.

The brutal slayings of Robert Stethem, the Navy diver, last month, William Stanford and Charles Hegna, the two AID auditors, last December, and the shooting of six Americans at a restaurant in El Salvador on June 19, were acts of murder. The only thing which these people had done was to be in the wrong place at the wrong time.

These should indeed be crimes in every nation's book. We hope a means can be found to persuade all governments to adopt this point of view.

The second point about the legislation is, it is a useful step in developing the international legal framework. As we said, we would like to see other countries adopt this approach of treating terrorist acts as criminal acts. We would like to see each country act unilaterally. We would like to do it on the basis of bilateral agreements of the sort that we are trying to work out with United States-United Kingdom on extradition, which makes clear that it is criminal activity and not political offenses. We would welcome some sort of broader international treaty or convention of the sort that have been adopted dealing with hijacking, sabotage, taking of hostages, things of this sort.

As Senator Specter pointed out, this takes a long time. Therefore, the United States setting the lead, showing the world where it stands, is, we think, a very useful approach.

We would encourage other states to adopt legislation embodying the same principle, that is, terrorist acts are criminal acts.

Third, the legislation is symbolic. It underscores the magnitude of our reaction against a series of recent violent murders of Americans overseas. This may be intangible, but is nevertheless very important in our overall efforts.

S. 1429 and previous laws do not provide solutions in themselves to such complicated, far-reaching problems, but they should be viewed as tools or weapons, as part of our overall arsenal to do away with the terrorist threat, to make clear to the world that acts of terrorism are neither glamorous acts, nor part of some romantic fight for freedom, but criminal actions, plain and simple.

Judge Sofaer has expressed very clearly, I think, some of our reservations as to the detail and dealt with the legal issues brilliantly. So there is no need for me to get into that; it is a subject for which I am not qualified. But it is essential to emphasize the efforts to strengthen the international legal framework must continue and that it is a two-way street. We have to be consistent. We must recognize that terrorists from other countries who have committed murders or other criminal acts sometime seek refuge in the United States. We must be willing to help the governments of these countries bring such terrorists to justice, treating them as criminals and not indulging their claims to have been politically inspired or believers in some romantic cause. This is important.

It is important to recognize, as Senator Denton pointed out, that there may be other inconsistencies in our approach to terrorism which cause other governments to be less cooperative with us than they might be. The question of mercenary training camps is a very interesting one. I am not at all sure of the legal situation, but I can tell you that politically abroad, it has hurt us very badly—not just in India, but in countries like the United Kingdom, where they are aghast that there is the possibility in the United States for mercenaries, either American or other, to come, to get training, to pay a fee, to enroll as if you were going to basketball camp or football camp, and come out with the sort of training that enables you to commit terrorist activities.

I am not sure they understand exactly what goes on in the camps, but the image which has been projected links Sikh terrorists whom we know to have been engaged in attempts to assassinate Indian Government officials in this country. Having gone through a camp like that, the image abroad is that the United States is very permissive. We are, in a way, seen as encouraging terrorism, but at the same time, we are telling everyone else to crack down on it. What goes on in the United States is one thing, and what happens abroad is something else. So that is a question that does have to be dealt with in terms of inconsistencies in our approach.

Senator Specter [presiding]. How many of these training courses are there, Ambassador Oakley?

Mr. OAKLEY. It beats me, Senator.

Senator Specter. Are they subject to any governmental regulation at the present time?

Mr. OAKLEY. This is a question that really needs to be addressed by the Justice Department. From the talks we have had with them,

Senator SPECTER. Would you gentlemen think it useful or unadvisable to comment on the issue raised by the New York Times article of last Thursday about a grand jury now being in process to return indictments as to the three terrorists who hijacked the TWA plane—I do not want to pursue that matter if you think it would be harmful to any activity which is under way, but if it would not be, it is a matter of great public concern, obviously.

Mr. SOFAER. Well, I think the Department of Justice should be consulted on that. Indeed, I would note they were not invited to testify here, and I assume that you will not go forward with the legislative process without getting their input on all the relevant issues. But I would think that that is really a local law enforcement activity. The grand jury process is secret, controlled by rule 6, as you know, of the Federal Rules of Criminal Procedure, and so I feel it would not be appropriate for us to discuss.

Mr. OAKLEY. All we could say, Senator, is that of a general nature, this is indeed the principle that you have been espousing for some time, that terrorist acts should be made criminal acts and should be treated as such under U.S. law. As Senator Denton pointed out, your committee was instrumental in getting several things through, legislation that had been pending, to give force to the Montreal and Tokyo Conventions, which enables us to apply more broadly this principle of making terrorist activities a criminal act. Your bill would cover the gap which still remains.

Therefore, as a general matter, without commenting upon the specific article, or whatever the grand jury may or may not be doing, we think this is a step in the right direction.

Mr. SOFAER. We have made a demand for appropriate law enforcement actions by the State of Lebanon. That has been put in place, diplomatically.

Senator SPECTER. What has the response been, Judge?

Mr. SOFAER. Well, I have read in the papers, along with you, that they have issued warrants for the arrest of three identified people. And we do not have any information that would lead us to believe that they are ill informed as to the identities of those people.

Senator SPECTER. Assuming that we know they are identified, assuming that they are not taken into custody by the Lebanese, that they ignore our request and they have not taken them into custody, to the best of our knowledge at the moment, so we do not have them in our custody, would you think it appropriate to proceed under the line of the *Ker* case and bring them back alive?

Mr. SOFAER. Well, you missed my testimony. I take issue with your view that it is no different to arrest somebody in Lebanon than it is in Philadelphia. I think it is different. And I think that before we act in any kind of self-help manner, we should be very, very cautious, and view that as a most extraordinary act.

As I pointed out when you were not here, the nations that fail to produce people intentionally—and unintentionally—when we make extradition demands go far beyond the State of Lebanon. They include States like France, Switzerland, and other allies. And there are many rules that people rely on to refuse to produce people through legal channels. And the United States is one of the violators of this very principle: we, our courts, have invoked rules, polit-

ical offense exceptions and whatnot, to refuse to send murderers to the United Kingdom and other States.

So I think you have to realize that it is not an easy thing to authorize, and certainly not something you would do as a routine matter.

With Lebanon in particular, consider this fact, Senator, that is that they just announced—and it may be true—that they have arrested those who bombed the U.S. Embassy, and they are going to be tried—this is what the public statements indicate—they are going to be tried by a military court. And one of their government officials has said that they are going to ask for the death penalty for those people who bombed the U.S. Embassy. Now, I do not know whether it is true, but it may be true. And it may be that the Government of Lebanon is trying, to the extent that it is capable, to deal with this problem. They have some fine lawyers over there in the midst of this chaos, and they come back to us with all of the fine points about why we have to be conscious of our agreements with them, and how we have to conduct ourselves so that we do not violate international law and accepted principles and our bilateral agreements with them. So this is a sensitive area in which, only after all the legal channels are exhausted, as you yourself pointed out, and only in the kind of case where the interests of the United States have been determined through the proper executive processes at the highest level to require some kind of self-help measure, would that be appropriate in my judgment.

Senator SPECTER. Well, Judge Sofaer, I agree with everything you have said. I think when you say we ought to be cautious, you are right. When you say it is not routine, I think you are right. When you say it is the last resort, I think you are right. When you say it is a matter of great sensitivity, I think you are right. When you say only after all other channels have been exhausted, I think you are right. When you say it ought to be decided only at the highest levels, I think you are right.

But there comes a point where we ought to act, in my judgment, and I think the arrests ought to be made, and I think you and I are on the same wavelength. It is a question of our legitimate interest and the least possible force. And if you pinpoint three individuals, and you make arrests, albeit forcefully, after you go through your litany—caution, not routine, last resort, sensitivity, decision at the highest levels—I just hope we will act in this matter.

Mr. SOFAER. Well, I hope you will help us put together a good team to do this job in West Beirut, in the event this ever becomes a reality. I am jesting in part, but I do think that you have got to realize that even where we agree finally, that wouldn't it be great, and isn't it just so extreme and so outrageous that we should do something to get these three—the question then becomes tactical. What can we do, and how do we do it? Where we can do something, where we have got the capacity to do something, the intelligence to do something, well, then, that is something that you and I are going to be happy was done. But where we do not have the capacity to act effectively, and we try to do something, it does not look good for us. It does not help America. So we have to keep that in mind.

Senator SPECTER. I am going to have to leave now, because they do not have a quorum. I would help you put together a team. I

would have a suggestion for the judge. I might even have a suggestion for the prosecuting attorney.

Let me leave you with one question, and I do have to go back, because they have eight Senators there. Have we made a request that those who have been taken into custody for the bombing of the U.S. Embassy be turned over to the United States for trial in a U.S. court, because I think we ought to?

Mr. SOFAER. I agree with that. And if we have not, I think we certainly ought to, if we can identify them. This preceded my coming on as Legal Adviser, and I will look into it.

Senator SPECTER. I mean the ones who are in custody now, that they are about to start the trial on.

Mr. OAKLEY. If it is a violation of U.S. law, and presumably, it is——

Mr. SOFAER. I will get to work on it.

Senator SPECTER. All right. We will pursue that, and we will recess the hearing for 15 minutes.

[The prepared statement of Mr. Oakley follows:]

## Prepared Statement of Robert B. Oakley

Mr. Chairman, and other Committee members, thank you for the opportunity to testify here today with Judge Sofaer to discuss our continued joint efforts to counter international terrorism.

Senator Specter's bill, S. 1429, the Terrorist Prosecution Act of 1985, can be an important part of this effort. We appreciate the opportunities we have had in the past to discuss the anti-terrorism initiatives of Senator Denton and Senator Specter and we look forward to a continuing good working relationship.

I have a short statement and will not attempt to duplicate Judge Sofaer's excellent discussion of the details of S. 1429. To allow the maximum time for questions, I will comment briefly on the utility of this legislation in strengthening our anti-terrorism effort. I would like to offer three areas, primarily relating to the foreign policy and diplomatic aspects of our anti-terrorism effort in which the bill is helpful.

First is the legal principle. The legislation can be a useful component in our efforts to obtain extradition of persons we seek to bring to trial or to persuade another government to prosecute. It emphasizes the view of the United States that criminal acts by terrorists, particularly murder and attempted murder are crimes which require punishment. This is a very important principle. Second, the legislation is a useful step in developing an international legal framework against terrorism. It fills a gap, as Judge Sofaer said, in our current structure of criminal jurisdiction over acts of terrorism committed against

Americans overseas. We would encourage other states to enact similar legislation. Third, the legislation is symbolic. It underscores the magnitude of our reaction against a series of recent violent murders of Americans overseas.

S. 1429 and the previous laws, as I'm sure the Committee recognizes, do not provide solutions in themselves. Rather, they should be viewed as tools-- part of our equipment to make clear to the world that acts of terrorism are neither glamorous acts nor part of some romantic fight for freedom, but criminal actions plain and simple. The brutal slayings of Robert Stethem, the Navy diver last month, and William Stanford and Charles Hegna, the two A.I.D. auditors last December, whose only fault was to be in the wrong airplane at the wrong time, were criminal acts, plain murder. Likewise, the shootings of six Americans at a restaurant in El Salvador on June 19 were acts of murder. These should be crimes in every nation's book. S. 1429 will give us additional legal means to pursue with other governments in responding to such acts of violence.

I believe it is essential to emphasize that this effort to strengthen the international legal framework against terrorism is a two-way street. We must recognize that terrorists from other countries who have committed murders or other criminal acts sometimes seek refuge in the United States. We must be willing to help the governments of these countries bring such terrorists to justice, treating them as criminals and not indulging their claims to have been politically inspired.

We recently have completed a supplementary extradition treaty with the United Kingdom. Senate advice and consent to ratification of this treaty is essential to strengthen

our international effort to cooperate in dealing with terrorism. We cannot focus solely on those aspects of terrorism which most directly affect U.S. citizens. To do so makes it more difficult to persuade our friends in Europe and elsewhere to understand that terrorism is an international threat and requires international cooperation.

These efforts to build the legal framework are very important. We welcome your initiative. If you have any questions, we would be glad to respond.

[A short recess was taken.]

Senator SPECTER. The hearing will now reconvene.

I express my regrets at the recess. We did get the immigration bill reported out of the Judiciary Committee, in the event anyone is interested in that accomplishment—and that is some substantial accomplishment, to get that bill out of committee.

Our next distinguished witness is Dr. Ray S. Cline, senior associate for the Center for Strategic and International Studies at Georgetown University. Dr. Cline is a widely recognized expert in the study of international terrorism. His background as a former Deputy Director of the CIA and former State Department official gives him a unique perspective in addressing the complexities of international terrorism.

I welcome you to today's hearing, Dr. Cline. Your complete statement will be placed in the record, and to the extent that you can summarize your testimony, we would appreciate that, leaving the maximum amount of time for questions and answers.

**STATEMENT OF DR. RAY S. CLINE, SENIOR ADVISER, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES, GEORGETOWN UNIVERSITY, WASHINGTON, DC**

Dr. CLINE. Thank you very much for the opportunity to appear here. My purpose is simply to support your Senate bill S. 1429, entitled "The Terrorist Prosecution Act of 1985". Without analyzing all of the legal terminology of the bill, it clearly is a useful instrument for the definition of the crime of international terrorism and the extension of jurisdiction, and this has been pointed out.

I also wish to testify in support of the general philosophy and legal rationale you have presented, calling for enactment of this bill and introducing a number of related bills and resolutions, particularly the Senate resolutions—I noted 190 and 191.

Let me say, simply to summarize my views on this issue, that there are some tasks that need to be done to raise the consciousness of our own people, including our Congress and our news media, about the gravity of the crime of international terrorism and about the importance of remedies for it. And I think legisla-

tion on this subject will demonstrate that the U.S. Congress is taking a phenomenon seriously which, as many witnesses and the Senators have already expressed, is probably the gravest kind of strategic security threat to the United States today.

If I may summarize a couple of thoughts from a report on international terrorism which was printed by the Senate Judiciary Committee, Subcommittee on Security and Terrorism, about 6 weeks ago. It explains why we have to do something and why legislation of the kind here proposed is useful.

I think what we must bear in mind is that a number of militant, autocratic regimes, some of them Communist States, some others like Iran and Libya, are actively exporting terrorists and terror techniques into other countries whose governments they wish to injure or overthrow. That being the case, Americans must develop a philosophy, a strategy, and a legal rationale for self-defense, which is not easily defined in terms of our customary international posture, our diplomacy, and even the sometimes vague quality of international law.

But if we recognize that the main goal of this particular variety of terrorism, State-sponsored terrorism, is to injure our society and our institutions, as well as our citizens, then it is the duty of the U.S. Government to find legislative remedies insofar as they can be found to protect our citizens and our society.

It is the damage to the stability, the governability, and the security of pluralist States with representative governments, and particularly to the United States and its main allies, that is the problem today.

Therefore, I welcome attempts to focus attention on this problem. What we need is better understanding of the issue. What we need is a strategy for our Government that imposes costs on the terrorists and on their State sponsors. And defining terrorism as an international crime and making it part of the jurisdiction of the U.S. court system will be very helpful.

So, I conclude, Senator, that your bill, S. 1429, is one of the countermeasures that is moving in the right direction and is required to make clear the character of these criminal acts, and to help us impose costs on the terrorists and hold them accountable in world opinion and in courts of law.

Thank you very much.

[The prepared statement of Mr. Cline follows:]

# PREPARED STATEMENT OF RAY S. CLINE

GENTLEMEN:

My appearance here today is for the purpose of supporting Senate Bill S1429, entitled the "Terrorist Prosecution Act of 1985." I also wish to testify in support of the general philosophy and legal rationale presented by the sponsor of S1429, Senator Arlen Specter, in calling for enactment of this Bill and in introducing a number of related bills and resolutions, particularly Senate Resolutions 190 and 191.

The nub of Senator Specter's argument in my view is that every legal loophole must be closed that would prevent the lawful prosecution of terrorists committing an international or transnational crime involving acts: a) to intimidate or coerce a population, b) to influence the policy of a government by such intimidation or coercion, and c) to affect the conduct of a government by assassination or kidnapping and hostage-taking.

Acts like the murder of our U.S. Marines in their barracks in Beirut in 1983, the repeated destruction of U.S. Embassies abroad with loss of life, and the holding of U.S. citizens as hostages as occurred in Iran during 1980 and in the recent 1985 TWA aircraft hijacking are unmistakably crimes by every standard of civilized conduct. Unless these international terrorisst acts are plainly recognized as criminal conduct and the perpetrators brought to justice in some jurisdiction where the law is effectively administered this increasingly common assault on international

law and order and on the security of U.S. citizens everywhere will continue to proliferate and become even more deadly.

Gentlemen, on 13 May 1985, I had the privilege of presenting my views on the subject of international terrorism to a Joint Hearing of the Senate Judiciary and Foreign Relations Committee. In that hearing I referred to a report prepared by myself and a colleague at Georgetown University on the kind of covert criminal warfare against the United States and its friends abroad that is now taking place as a result of increasingly common state sponsorship of terrorism. This report, originally prepared for the United States Army, was reproduced as a Senate print in June 1985 by the Senate Judiciary Subcommittee on Security and Terrorism.

With your acquiescence, I will conclude my remarks by quoting or paraphrasing some brief statements in this document:

> The Soviet Union and its client communist states, as well as a number of other militant autocratic regimes like Iran, Libya, and Syria, are actively exporting terrorists and terror techniques into other countries whose governments they wish to injure or overthrow.
>
> Americans must make the most of the fact that self-defense is a legitimate posture in the protection of our society and institutions as well as our citizens.
>
> The main goal of this state-sponsored terrorism now at the end of the twentieth century is to undermine selectively the policies, the psycho-social stability, and political governability of pluralist states with representative

governments, particularly the United States and its main allies.

When terrorism is state-sponsored, it is plainly in some sense a form of secret or undeclared warfare.

The United Statess needs to work out a strategy that imposes costs on the terrorist and the state sponsors.

A coherent and firm U.S. policy on responding to state-sponsored terrorism with effective countermeasures will retard and deter the international terrorist campaign now confronting us.

Gentlemen, I believe Senator Specter's Bill S1429, is one of the effective countermeasures required to make clear the character of these international terrorist crimes. It will help us impose costs on the terrorists and hold them accountable in world opinion and in courts of law. It is a step toward self-defense of our people and society.

Senator SPECTER. Thank you, Dr. Cline.

From your testimony, I take it that you agree that it is an appropriate exercise of extraterritorial jurisdiction for the Congress to define U.S. interests to include acts of terrorism against U.S. citizens wherever they are, anyplace in the world.

Dr. CLINE. Yes, sir. I think that it is very helpful to have a legislative underpinning and framework for acts that the U.S. Government may be compelled by circumstances to take, because international law, as you know, is not a law that is enforced by a constituted constitutional authority, as it is within each nation. In many ways, international law is the practice of the great States acting in defense of their own sovereign understanding of their requirements.

So I believe that a consensus in our country, a legal and political consensus is required, and I think our society has been rather slow to bring it about, and I do agree with the many statements made congratulating Senator Denton's committee and you personally, in trying to enlighten people about the importance of this issue.

Senator SPECTER. Dr. Cline, in terms of the minimal amount of force being used to obtain the objective, if we are unable to obtain custody through the offer of rewards and negotiations with Lebanon and use of extradition procedures, given the situation in Lebanon, where there is hardly a government in existence, do you concur that it would be highly desirable to bring the TWA terrorists back to the United States for trial?

Dr. CLINE. Yes, sir. In the conditions that you and the Legal Adviser of the State Department discussed, where you have exhausted other remedies, and the Government of Lebanon is unable to perform its international legal responsibilities, I think we would have every right in international law to apprehend these international criminals and bring them to the bar of justice in our own jurisdiction. Naturally, we would do that, as you said, with caution, and after careful consideration of our political relationships with our allies and other nations.

But in the last resort, we are dealing with what is essentially undeclared warfare, and in a war, declared or undeclared, every nation must protect its own institutions, its own society, and its own citizens, and it therefore must bring criminals who violate the security of these institutions and people to justice, and that is what we are doing. I hope that we can avoid the words "revenge" and "retaliation" and some of the words which are often used in these matters. What we are after is justice. What we are after is the execution of the principles of law, and preserving the fabric of civilized society of an international kind in the face of a determined assault by nations that do not respect these principles.

Senator SPECTER. Well, I think you put it well, as a last resort. And Judge Sofaer and I went over the list—to use caution, not to make it as a routine matter, regarding the sensitivity, to be decided at the highest channels, but if it requires force on our part to take them into custody, whether or not Lebanon consents, under the principles of *Ker* v. *Illinois*—call it abduction, call it what you will—do you think that is an appropriate course for us to take?

Dr. CLINE. I believe it is the last resort, with those reservations that you have expressed. It is a legitimate and an appropriate

course. What is required, as you know, Senator, is for us to have built the international understanding, as well as our national consensus, on this matter so there will be a unity of action on our part. We must have the intelligence information that makes us able to act efficiently to carry out our objectives without more than the minimal, undesired side effects, and we must move with expedition and adequate force to do the job.

In other words, once you decide that a law enforcement act is what you are involved in, which is the apprehension of criminals, then you do not let that act be rendered ineffective by the resistance that you may meet.

Now, if you are prepared, and the U.S. Government is prepared, to take the kind of steps on the basis of adequate intelligence that will bring to justice the criminals, I think we have every right to do so, and that we should morally feel we must do so.

Senator SPECTER. Well, you say it is legitimate and appropriate, and you say that what we have to do is to define the norms and get support in the international community. We have to establish in the first instance what we think is proper, we have to articulate it, and we have to seek support. That is the way principles of law are established. There are first steps in every line of a judicial decision, or in a principle which breaks new ground, and that is a common factor in the development of the common law. That has been the history of the common law. It did not evolve full blown with all the principles in place. It is a case-by-case analysis, analyzing the factors, building on analogous situations from the past, and taking it a step at a time.

Dr. CLINE. I think you are absolutely right, Senator, and to put it just a slightly different way, in the years I have spent in Government—which were a great many, after Pearl Harbor—I observed a number of international crises involving the use of force or the possible use of force, and in every case, a responsible formulation of American commitment to legal procedures and international law was the indispensible ingredient of a performance of a responsible great power.

If the United States takes its commitment seriously and carries out the law, that is the way international law is established. In a sense, as the historians say—and I am a historian—international law is the certified conduct of great powers exercising their responsibilities justly.

Senator SPECTER. One other question, Dr. Cline. You heard the testimony of Judge Sofaer when I asked him about calling on the Lebanese to return for trial those who are currently in custody for the bombing of the U. S. Embassy.

Would you consider that an appropriate course on our part, to try to bring them here to trial?

Dr. CLINE. Sir, I think it is an appropriate course. I think I would consider first whether the jurisdiction of Lebanon and the competence of that Government would permit a trial in the jurisdiction of Lebanon. I think the principle we should follow is that which I believe is in the Hijacking Convention anyway, that it is an obligation for the criminals to be brought to justice, that it is appropriate for the nation that ends up with them in their hands, perhaps through no wish of their own, to either try them in their own

system of justice, or extradite them to the place where the citizens whose rights have been violated reside.

I do not think, if we asked the Lebanese Government to take appropriate legal action against the criminals, we probably should insist that they be extradited to this country, but if we came to the conclusion that it was impossible because of the near civil anarchy which does exist in Lebanon, for justice to be carried out there, then we would certainly want to extradite them. That is the second procedure, in my judgment.

Senator Specter. Well, we face an evolving picture here. The customary principle is that a defendant is tried in the locale where the offense was committed. And our standard principle, if a crime is committed in Virginia, the defendant may not be tried in Maryland. It attaches to the locale where the offense was committed. Piracy is an exception. You can try a pirate wherever you can find him.

Now, in the circumstance of the bombing of the U.S. Embassy, it seems to me that the United States of America has the primary concern. We have, in the language of the lawyers, the heaviest, most contact points. If you analogize it to a custody case, or a domestic relations case, or to many cases where two jurisdictions touch the matter, and there is a decision as to which jurisdiction has a primary call to try the case, it is a question of contact points. It is true that the U.S. Embassy was located in Lebanon. But it is also true that the U.S. Embassy is U.S. property, and that U.S. citizens were the victims of the attack, and that the United States of America is the aggrieved party. And my own view as an evolving matter is that we ought to have primacy in the matter, and we ought to assert it.

I think it would be a great day for international justice if those terrorists were brought to the United States, to Washington, DC, and were tried in a U.S. court, and were convicted here, and were imprisoned here, because we have the primary concern. And this is a matter where I think we are going to have to start a new trail in accordance with fighting fire with sagginess. We are not fighting fire with fire, we are fighting fire with justice here, as established principles.

But I think there are those which have to be articulated, considered, digested, and then have a chance of becoming a part of the fabric of our law.

But there are good reasons to have the trial here, to deviate from the norm of trying it where the offense was committed, because we have so much more of stake than does Lebanon. And then there is the issue as to whether there is a Lebanese entity, which can try anyone.

Dr. Glass, Right.

Senator Specter. Well, Dr. Glass, it is very, very helpful to have you here, that our final question. Did you have a chance to consider Senate bill 1408, which provides for the death penalty for people killed, murdered in the course of terrorist acts?

Dr. Glass. I had a chance to look at it, Senator, after I had prepared my testimony, only. I endorse that bill. I think it is quite a testimony to the seriousness of the crimes we are dealing with, and

[illegible]

[illegible]

[illegible]

Senator SPECTER. Tell us what you personally observed as to the attacks on Mr. Stethem.

Mr. BYRON. Well, of course, while he was being attacked, we had our heads down, so we did not see the beating. However, there was one point during the flight where they brought him back into our section of the plane, and I was changing my position, and I happened to look up, so I did see him. He seemed almost semiconscious—blood on his face and raw around his neck—covered with blood.

Senator SPECTER. He was alive at that time?

Mr. BYRON. Yes.

That is the last time I saw him. Later, they brought him up front again, and after the plane landed, we all heard the shot when he was killed, and we all knew what it was.

Senator SPECTER. Mr. Byron, do you think that the United States has responded with sufficient resolve in dealing with the kind of terrorist attack that you and your wife and daughter were victims of?

Mr. BYRON. I think they have probably done all they can under existing law. I do not favor what people call revenge or retaliation; that we should send in a commando squad or something to bring the people out or to destroy a camp that they have. There still are Americans there, seven still being held hostage, and I do not know what would happen if we used military force at this time. So, I think we have probably done all we can within existing law. However, I would favor any new laws or enforcement of existing laws to set up a legal climate to deter this in the future.

Senator SPECTER. I already know the answer to this, because you and I discussed it in your living room, but would you favor returning the terrorists to the United States of America for trial in a U.S. court?

Mr. BYRON. Absolutely.

Senator SPECTER. Would you like to be a witness in that proceeding?

Mr. BYRON. You bet.

Senator SPECTER. While the death penalty cannot be imposed because it is not on the books at the present time, do you think that the death penalty is appropriate for terrorists who murder a man like the Navy diver, Stethem?

Mr. BYRON. Very appropriate.

Senator SPECTER. How do you feel about traveling abroad on another American flight to return to Athens or to the Mideast on another vacation such as the one you were on when this occurred?

Mr. BYRON. Well, I do not think we are deterred from travel. We enjoy traveling. I think if you change your opinions just because of this, then, in effect, the hijackers have won a small victory over us. However, I would feel safer on my next trip if some of the security measures at the airport were improved, if they had sky marshals on the plane, things like that, that are not within the scope of this legislation here today. Things like that would make me feel safer.

Senator Specter. Well, you and I did discuss your ideas about security, and I think it would be useful, although it is not encompassed within this specific legislation, to get your feeling on it. As you discussed it with me, you had a lot of time to talk about a lot

of things between you and your fellow hostages, and you took this question up in some detail and with considerable intensity, considering the fact that you were the victims of a hijacking.

What suggestions do you have in the line of trying to prevent a recurrence of this kind of atrocious conduct?

Mr. BYRON. Well, I think, of course, they could do physical inspections of the hand luggage instead of the x ray. They could also do a pat-down inspection of the passengers. They could force you to stand with your luggage on the tarmac so there would be no unclaimed luggage onboard the plane; so that somebody could not smuggle a bomb on, let us say, and not be part of the passenger list.

I think sky marshals may have played a very important role in the hijacking we were on if they had had them on the plane, so I would encourage that, although some people do not like the idea of having armed men onboard flights.

Senator SPECTER. You think the sky marshals would have been helpful, perhaps to deter the hijackers?

Mr. BYRON. I think that the behavior of the hijackers was so suspicious on our flight that if sky marshals had been there, had been trained to spot these people, they would have been standing right next to them in the aisle, and if they had made their move, they would not have had a chance to stand up.

Senator SPECTER. Mrs. Byron, you had some interesting things to say about that specific subject, about your suspicions about the hijackers. We thank you for coming, Mrs. Carolyn Byron, and let us begin your testimony on that subject.

As you told it to me in your livingroom, what did you see when you were in the Athens Airport that aroused your suspicion about these specific individuals who turned out to be the hijackers?

Mrs. BYRON. We described in detail our suspicions and observations in our statement, which we have submitted. But I will briefly say that I observed both of the young men who were later to become known as our original hijackers, the one failed the detection device test twice——

Senator SPECTER. In the Athens Airport?

Mrs. BYRON [continuing]. In the Athens Airport at the second security check, prior to our boarding the aircraft. I noticed that the one hijacker who had cleared security was extremely nervous. The one who was having a problem clearing security was almost arrogant, very calm, cold, calculating. This to me aroused suspicion, because it was the opposite situation from what you would suspect. With people watching you, you would think you would be nervous, but he was not.

There were no steps taken other than what had been done for routine passengers who had not failed the detection device. In other words, his hand luggage was not examined, he was not patted down. The attendant who was observing him passing through did not even move closer to him. This all seemed very unusual to me. I was suspicious, and I was merely a traveler.

Senator SPECTER. Do you know whether the hijackers' luggage went through any detection devices at the Athens Airport?

Mrs. BYRON. All hand luggage passed through the detection devices, the x-ray machines. The beep occurred and I was alerted to this person being suspicious.

Senator SPECTER. When he went through, there was a beep?

Mrs. BYRON. When he walked through, yes, twice.

Senator SPECTER. Did anything occur when his luggage went through?

Mrs. BYRON. Not that I observed.

Senator SPECTER. And when the beep occurred, what did the attendant at the airport do, if anything?

Mrs. BYRON. He motioned for him to empty his pockets, which he did, twice.

Senator SPECTER. Did he pat the man down?

Mrs. BYRON. No.

Senator SPECTER. He made no other effort to determine if there were a weapon on the man?

Mrs. BYRON. No. He called for no assistance.

Senator SPECTER. And he called for no assistance. And when you watched it contemporaneously with the event, you were suspicious?

Mrs. BYRON. Yes, I was. I made the remark to my husband as we were boarding the bus to go to the aircraft that I felt very uneasy with these two men aboard our flight.

Senator SPECTER. Kind of an eery feeling?

Mrs. BYRON. Yes, déjà vu.

Senator SPECTER. Mrs. Byron, what do you think ought to be done by our Government to deal with this problem of international terrorism?

Mrs. BYRON. I agree with what my husband has said. I think these men should be apprehended, should be tried, convicted, sentenced. I think this would be a great deterrent to future hijackings. I think it would give us comfort as American citizens.

My husband and I discussed this earlier. We felt we were singled out for no other reason than that we were American citizens. It played a large part in our abduction.

Senator SPECTER. Would you be prepared to come to court and testify?

Mrs. BYRON. Yes.

Senator SPECTER. Thank you very much.

Miss Pamela Byron, tell us about your experiences. Your father has already described some of the physical abuse. Would you please amplify just what happened to you on this hijacking?

Miss BYRON. Well, as my father mentioned, I was kicked in the shoulder. When this occurred, they were moving the men from the aisle to the window, I suppose so that the men could not obstruct them on the aisle in any way, and they moved me to the aisle seat. As I was fastening my seatbelt, obviously, I must not have been doing it to his satisfaction, and he gave me a kick so I would get down in the "847" position. That is all that occurred.

Senator SPECTER. When you say the "847" position——

Miss BYRON. I mean the head between the knees.

Senator SPECTER. And you were actually kicked?

Miss BYRON. Yes, on my right shoulder, the shoulder that was in the aisle.

Senator SPECTER. How did you feel about this hijacking, Pamela?

Miss BYRON. Well, in the beginning, I really did not understand—well, I understood what was happening, but it did not sink in, the full impact of what was going on, and that we were in the middle of an international ordeal between governments. It was very frightening when I realized this. Of course, we were all scared, which was the foremost emotion that we had throughout this entire incident.

Senator SPECTER. What would you like to see done by the Government of the United States in dealing with this problem?

Miss BYRON. I would really like to see them be brought to justice, preferably in the United States, have them tried in a court of law, and sentenced appropriately.

Senator SPECTER. Thank you very much, Pamela.

Mr. Byron, Mrs. Byron, and Miss Byron, do you have anything you would like to add?

Mr. BYRON. Just that anything that comes out of this hearing and out of this legislation that would prevent families such as ours from suffering this same abuse, we are very, very hopeful that something like that does happen. It would be worthwhile—sort of—to have gone through the experience.

Senator SPECTER. Mrs. Byron, do you have anything you would care to add?

Mrs. BYRON. No.

Senator SPECTER. Pamela?

Miss BYRON. I would like to add to my father's statement. I do feel it is unfair that we were put through this sort of a thing. I feel if they were brought to justice, or anything did come out of this legislation, it would be a great accomplishment, because it is unfair what they put us through. We did not ask for it. We were just there. We were travelers. We were American citizens who happened to be in the wrong place at the wrong time, and were put through this thing, against our will. I feel that is very unjust and unfair.

Senator SPECTER. Well, I can assure you that it will be pursued by this subcommittee and by the full Judiciary Committee and, I believe, by the Senate and by the Congress. There are many of us who have been working on this for a long while. And the hijacking of a TWA plane is only one of a recent series of events. Following the murder of the British policewoman by the Libyan diplomat, Senator Denton and I introduced legislation to revise the Vienna Convention, and then, legislation to limit diplomatic immunity so that if a diplomat uses a firearm in the United States, immunity would not protect him from prosecution. We also sought to cut off trade with Libya and finally got a bill through the Senate, and it has been put through the House, and it is in Conference Committee, which would authorize the cutoff of trade with Libya as a step forward in that direction.

When the Embassy was blown up in Beirut in 1983, that led to legislation which a number of us introduced, which would make terrorism an international crime, to convene an international convention, to define terrorism as an international crime like piracy, and also to provide for jurisdiction in a U.S. court to bring people to trial.

And last year, we did have legislation passed on hijacking of airliners which would provide the legal basis now to bring those hijackers back to the United States for trial, conviction, and punishment.

This legislation would broaden that to not only cover hijacking but any acts of terrorism against American nationals anywhere in the world, and the bill to have the death penalty would be so that if there is a murder like the one of the Navy diver, Stethem, that the death penalty could be imposed.

And there are many of us who share your feelings about just being fed up with what is going on. Terrorism is a form of international war, but the only people at war are the terrorists, and we have to respond. And I believe that you will see action coming out of the U.S. Congress for more legislation, and I am hopeful that you will see action coming from the executive branch.

I am going to pursue the matter that I discussed with Judge Sofaer today by writing to the Secretary of State and asking that the United States demand and request the return to the United States for trial of those who are in custody in Lebanon today, so that we can bring those people who attacked the U.S. Embassy and murdered American citizens, bring them back to this country for trial.

That is what we want to do, and to expand and to pursue the prosecution of these three terrorists, pressing to offer rewards for their apprehension, and bring them back to the U.S. court right here in Washington, DC, to get indictments, establish probable cause, and pursue a prosecution in accordance with our principles. If it requires being tough in apprehending them, we are prepared to do that, and I think that is something which ought to be done, as Judge Sofaer described and I agree, as a last resort and very carefully done; but it ought to be done.

And your testimony is very helpful here in establishing the parameters of what we would like to accomplish. So we thank you very much for coming. It is great of you to spend this time with us.

Mr. BYRON. Thank you, Senator.

[The following statement was submitted for the record:]

## Prepared Statement of Leo, Carolyn, and Pamela Byron

Thank you for inviting us to testify today at this Subcommittee hearing on S. 1373 and S. 1429. We welcome the opportunity to contribute in any way we can to your efforts to develop legislation safeguarding the American traveling public from terroristic acts such as we recently experienced as passengers on TWA Flight 847.

The events surrounding the hijacking and the subsequent ordeal of those of us held hostage in Beirut have been widely reported and are well known. I was held captive for the full 17 days and my wife and daughter were captives for approximately a day and a half, being released in Algiers on June 15. If you have any specific questions regarding these events, we will be glad to answer them. Otherwise, we will confine our statement to those areas of our experience which we believe are most directly related to the concerns of this hearing - mainly, legislative and/or diplomatic initiatives which may prevent future acts of terrorism against American travelers.

To this end, we consider three areas to be critical - those actions or procedures which may have prevented the hijackers and their weapons from boarding Flight 847, those actions or procedures which may have interrupted the hijacking in its earliest stages, and, finally, our view of how future terrorists may be deterred from considering events such as the TWA hijacking as viable means for achieving their stated political objectives. Although some of our comments and suggestions may not be within the scope and jurisdiction of this hearing, we hope that some benefits can be realized simply from their being publicly stated.

The first two areas of our concern - i.e. actions or procedures which may have prevented the hijackers and their weapons from getting aboard the plane and actions or procedures which may have thwarted the hijacking attempt during its first moments, are best discussed in the context of narrating our experiences as we recall them.

Our first encounter with security procedures prior to boarding TWA flight 847 on Friday, June 14, 1985, was on the waiting room level of the international terminal at Athens Airport. After clearing passport control the first security check by Athens officials could best be described as routine. One man observed the x-ray of hand luggage while seated near

the equipment; a second man watched as hand luggage was placed on the conveyor belt and the passengers passed through the detection device. This procedure occurred in a calm and unhurried manner, although it should be noted that the three of us were alone at the time we passed through and did not have any knowledge of how this procedure was handled when there was more traffic at the security check. However, there was no particular attention paid to any of us by the men manning the security station and certainly there was no pat down inspection or manual inspection of hand luggage.

At the second security check, operated at the TWA boarding gate, there were many passengers awaiting the announcement for permission to board. We decided to join this line near the end to avoid the congestion which had developed near the entrance to the security check.

Again, one attendant observed the x-ray machine while another, this time from some distance away, monitored the passengers as they passed through the detection machine. As we waited on line, we noticed one young American passenger being taken aside for a closer investigation. Apparently the x-ray machine had indicated the presence of knives in his hand luggage; however, these knives turned out to be decorative souvenir daggers or letter openers and he was subsequently cleared through security.

After we passed through the security check, we had to stand in a crowded waiting area rather than being allowed to move outside where there was more room. This caused a great deal of congestion and confusion around the security area and certainly must have been distracting to the men responsible for the security screening of passengers. It was at this time we first became alerted to the presence of the two men who later became well known to us as the original hijackers of TWA flight 847. Hearing a beep from the detection machine, my wife turned her attention immediately to these two men and observed that one of them had passed through security and was standing beside the conveyor belt. He appeared very nervous and impatient as he waited for his companion to go through the security device. The second man was removing items from his pocket as directed by the attendant. He wore a sport shirt and carried a jacket over his arm. He repeated the security procedure again, and again activated the alarm. This time he removed keys or coins from his pants pocket and took a pack of cigarettes from his shirt pocket, tapping the pack on the counter as if to indicate that there was nothing in it. Once again he went through the security check and this time cleared it with a green light. He gathered his items and stood behind

us with his companion, waiting for us to proceed outside where we were to board the bus for the plane. During this time the second hijacker was very calm, almost arrogant in his demeanor, despite the attention he had received by activating the alarm.

Based on these experiences and the above series of incidents, a number of security-related questions have occurred to us:

If the suspicions of untrained, holiday-preoccupied passengers can be aroused by these events, would the officials responsible for their screening be similarly suspicious if they had been properly trained and better disciplined?

Why was the man who had successfully passed the security check so agitated by the fact that his companion was being detained?

Should this behavior have aroused the suspicions of the security personnel?

Should the presence of two suspicious looking middle-eastern men in the midst of a group of predominantly American tourists have alerted security officials to take special precautionary measures?

Would security officials trained in using psychological profiles of terrorists have taken additional security measures, such as pat down inspections of passengers or physical inspection of hand luggage?

Should the fact that the passenger list included the names of two men listing Beirut addresses alerted authorities to identify and take a greater interest in these passengers?

Does a security officer casually observing passengers from a distance of over five feet demonstrate proper concern for passenger safety, particularly at an airport already known for lax security measures?

The obvious answers to these questions indicate our thoughts about what could have and should have been done to improve the security of TWA Flight 847. Additional suggestions, not based on our personal experiences, would include the use of guards and security patrols for any aircraft parked during an extended layover, such as the 727 used for Flight 847, while awaiting a continuing flight; comprehensive security checks for all airport or airline employees - i.e. cleaning personnel, truck drivers, baggage handlers - who might be in a position to assist potential hijackers or terrorists; swift action by governments and airlines against airports which do not demonstrate the ability to maintain the highest standards of security; and, finally, a public education program to inform travelers of how a proper security system should operate and how to advise the appropriate authorities when less than

adequate security seems to be used at a particular airport or by a certain airline.

Our next area of concern is what might have been done on the plane to stop the hijackers before they could gain control. Although our personal experience is more limited in this area, we do have some observations. First, when the hijackers were established on the flight deck and in control of the aircraft, there was absolutely nothing to do, in our opinion, except what was done by the TWA crew - i.e. remain calm, keep the passengers calm and cooperate with the hijackers. Since our hijackers were in control of TWA Flight 847 within minutes after making their first move, it is obvious that any attempt to stop this hijacking would have to have been made within seconds of its start. In our opinion, the only type of personnel who could act in this manner would be trained, armed sky marshals. We firmly believe that, if sky marshals had been on Flight 847 and near the hijackers as they ran down the aisle, this incident could have been brought to a safe and speedy conclusion.

To further support this belief, an incident told to me by another passenger is pertinent. After the hijackers were seated and before the plane took off, one of the hijackers was involved in a suspicious incident which took place in the rear lavatory. This incident was observed by a number of passengers and was unusual enough to prompt one of the passengers, who later related this incident to me, to investigate the lavatory and, as a result of this investigation, actually find some physical evidence that was turned over to the crew. Unfortunately, this evidence was not made known to the crew until after the hijacking had occurred. However, sky marshals, trained in recognizing potential danger and looking for passengers meeting the psychological profiles of terrorists, would probably have noticed this incident and stationed themselves where they could have intercepted the hijackers when they made their first move. If this had been the case, the hijacking might never have been successful.

Finally, we would like to address the issue of discouraging future terrorists from using attacks against United States' citizens abroad as a means for advancing their political, religious or ideological causes.

First, let me state that we do not favor a policy of retribution or retaliation. To resort to those methods, no matter how emotionally satisfying they might be, is to lower ourselves to the same level of revenge-oriented tribal mentality that, in our opinion, motivated the hijackers of TWA Flight 847. In addition, such actions might imperil the lives of those American hostages still being held in countries which aid or shield terrorists.

This is not to say that we do not want the hijackers of Flight 847 and their companions punished. They were, as President Reagan so succinctly put it "thugs, thieves and murderers". The hijacking of the plane, the terrorizing of the passengers, the cowardly beating and capricious murder of the young navy diver and the detention of innocent United States citizens in Beirut are crimes that require the full measure of punishment possible under existing laws. If current laws do not cover those crimes or omit certain classes of terroristic acts and terrorism victims, then those laws should be amended or new laws passed. These laws also should contain provisions for the extradition of terrorists to the United States, or to a neutral country where a stable system of justice is assured. In our opinion, a trial of our hijackers and captors in a country such as Lebanon, which is on the verge of anarchy, would be meaningless.

Finally, all possible legal and diplomatic measures should be explored to develop an international legal climate wherein terroristic acts are dealt with justly, comprehensively, impartially and swiftly. None of us realizes more than we do that this is a diverse and imperfect world. However, a message must be sent to all terrorists that the United States will not tolerate the terrorization and victimization of its citizens when traveling or living abroad.

Thank you again for the opportunity to testify before this Subcommittee. We will be pleased to answer any questions you might have, either now or at some future date.

**Senator SPECTER. We are adjourned.**
**[Whereupon, at 12:05 p.m., the subcommittee was adjourned.]**

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